

Before the  
Federal Communications Commission  
Washington, D.C. 20554

In the Matter of )  
 )  
TerreStar Networks Inc. ) File No. ISP-PDR-20080229-00004  
 )  
Petition for Declaratory Ruling Under Section )  
310(b) (4) of the Communications Act of 1934, as )  
amended )

**ORDER AND DECLARATORY RULING**

**Adopted: December 23, 2009**

**Released: December 23, 2009**

By the Chief, International Bureau:

**I. INTRODUCTION**

1. In this *Order and Declaratory Ruling*, we consider a petition for declaratory ruling (“Petition”) filed by TerreStar Networks, Inc. (“TerreStar” or “Petitioner”) pursuant to section 310(b)(4) of the Communications Act of 1934, as amended (the “Act”), to permit TerreStar to have indirect foreign equity and voting interests above the 25 percent benchmark set forth in section 310(b)(4) of the Act.<sup>1</sup> As discussed below, we find that the public interest would not be served by prohibiting indirect foreign ownership of TerreStar in excess of the 25 percent benchmark in section 310(b)(4) of the Act, and therefore grant the Petition, subject to the conditions specified in this *Order and Declaratory Ruling*.

**II. BACKGROUND**

**A. The Petitioner**

2. TerreStar, a Delaware corporation, holds a non-common carrier license that permits it to operate fixed earth stations in the provision of fixed satellite service.<sup>2</sup> On December 5, 2006, TerreStar

<sup>1</sup> 47 U.S.C. § 310(b)(4). TerreStar Networks Inc., Petition for Declaratory Ruling Pursuant to Section 310(b)(4) of the Communications Act of 1934, as amended, File No. ISP-PDR-20080229-00004 (dated Feb. 29, 2008) (“Petition”); *see also* TerreStar Networks, Inc., Supplement to Petition for Declaratory Ruling (dated July 7, 2009) (“July 7, 2009 Supplement”); Supplement to Petition for Declaratory Ruling (dated Aug. 21, 2009) (“August 21, 2009 Supplement”); Partial Withdrawal of Supplement to Petition for Declaratory Ruling (dated Aug. 31, 2009); Submission of Information Requested by International Bureau Staff (dated Oct. 16, 2009); Submission of Information Requested by International Bureau Staff (dated Oct. 27, 2009) (“October 27, 2009 Supplement”); and Letter from Joseph A. Godles, Counsel to TerreStar Networks, Inc., to Marlene H. Dortch, Secretary, FCC (dated Dec. 3, 2009).

<sup>2</sup> *See Satellite Communications Services Information Re: Actions Taken*, Public Notice, Report No. SES-01087 (Int’l Bur., Nov. 19, 2008) (granting SES-LIC-20070530-000732, effective Nov. 13, 2008). TerreStar also holds grants of Special Temporary Authority for its earth station license. *See* File Nos. SES-STA-20090625-00794 and SES-STA-20090728-00927. On September 30, 2009, the Commission granted TerreStar’s application for consent to a pro forma transfer of control of its earth station license, SES-T/C-20090925-01237. *See Satellite* (continued....)

filed an application seeking blanket authority to operate, on a common carrier basis, up to 2 million portable handset mobile earth terminals (“METS Application”) to communicate with the TerreStar-1 mobile satellite.<sup>3</sup> The METS Application was amended to include (1) a request for authority to operate, on a common carrier basis, an Ancillary Terrestrial Component (“ATC”) in connection with its 2 GHz mobile satellite service station (“METS/ATC Application”),<sup>4</sup> and (2) a petition for a declaratory ruling to permit TerreStar to have indirect foreign equity and voting interests above the 25 percent benchmark in section 310(b)(4) of the Act.<sup>5</sup> TerreStar filed supplemental ownership information to its Petition for declaratory ruling on July 7, 2009, August 21, 2009, August 31, 2009, October 16, 2009, and October 27, 2009.<sup>6</sup> The METS/ATC Application is pending before the Commission.

#### **B. Public Notice and Comments**

3. The Petition was placed on public notice on March 13, 2008.<sup>7</sup> A Petition to Deny was filed by Sprint Nextel Corporation on April 10, 2008 (“Sprint Petition”),<sup>8</sup> followed by TerreStar’s Opposition to the Petition to Deny, filed on April 23, 2008 (“TerreStar Opposition”),<sup>9</sup> and Sprint Nextel’s

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*Communications Services Information Re: Actions Taken*, Public Notice, Report No. SES-01181 (Int’l Bur., Oct. 7, 2009) (granting SES-T/C-20090925-01237, effective Sep. 30, 2009).

<sup>3</sup> See *Satellite Communications Services Information Re: Accepted for Filing*, Public Notice, Report No. SES-00931 (Int’l Bur., May 30, 2007). TerreStar-1, owned by and licensed to TerreStar Networks Canada, an affiliated Canadian company, is a geostationary orbit satellite that operates on 2 GHz frequencies. TerreStar holds a Letter of Intent (LOI) authorization, originally granted to TMI Communications and Company, Limited Partnership in 2001, to provide mobile satellite services in the United States using spectrum in the 2 GHz band via TerreStar-1. See *TMI Communications and Company, Limited Partnership, and TerreStar Networks, LLC Application for Modification of Spectrum Reservation for 2 GHz Mobile Satellite Service System*, Order, 22 FCC Rcd 8602 (Int’l Bur. 2007); *TMI Communications and Company, Limited Partnership Letter of Intent to Provide Mobile-Satellite Service in the 2 GHz Bands*, Order, 16 FCC Rcd 13808 (Int’l Bur. 2001); *TMI Communications and Company, Limited Partnership, and TerreStar Networks Inc. Application for Review and Request for Stay*, Memorandum Opinion and Order, 19 FCC Rcd 12603 (2004).

<sup>4</sup> See *Satellite Communications Services Information Re: Actions Taken*, Public Notice, Report No. SES-01037 (Int’l Bur., May 28, 2008) (correcting SES-AMD-20070723-00978, effective May 20, 2008). According to TerreStar, the ancillary terrestrial component (ATC) of the TerreStar Corporation (“TerreStar Corp.”) network is designed to enable uninterrupted mobile communications in areas where satellite reception is difficult, allowing its customers to use mobile terminals to access both satellite and terrestrial infrastructure in the United States. See TerreStar Networks Inc., Application for 2 GHz band Mobile Earth Terminal Blanket License, Amendment at 5-6 (filed Sept. 7, 2007).

<sup>5</sup> TerreStar filed the Petition as an amendment to the METS Application, stating that changes in foreign ownership have occurred since the METS application was filed. See Petition at 4. See also Letter from Joseph A. Godles, counsel for TerreStar, to Marlene H. Dortch, FCC (dated July 13, 2007) (notifying the Commission that foreign ownership of TerreStar’s parent, TerreStar Corp., may be in excess of 25 percent).

<sup>6</sup> TerreStar filed supplemental ownership information in response to inquiries by International Bureau staff. TerreStar’s most recent filing, dated October 27, 2009, is a spreadsheet containing detailed ownership information for TerreStar Corp.’s voting, common stock and non-voting, preferred stock. This submission supplements and clarifies the ownership information that TerreStar provided in the July 7, 2009 Supplement and August 21, 2009 Supplement.

<sup>7</sup> See *Non Streamlined International Applications/Petitions Accepted for Filing*, Public Notice, Report No. TEL-01245NS (Int’l Bur., Mar. 13, 2008).

<sup>8</sup> See Sprint Nextel Corporation Petition to Deny (filed Apr. 10, 2008) (“Sprint Petition”).

<sup>9</sup> See TerreStar Opposition to Sprint Petition (filed Apr. 23, 2008) (“TerreStar Opposition”).

Reply to TerreStar's Opposition filed May 5, 2008 ("Sprint Reply").<sup>10</sup> An Agreement dated December 18, 2009, was entered into between TerreStar Corporation, TerreStar Networks Inc. and all of their affiliates and subsidiaries (collectively "TerreStar") and the U.S. Department of Justice ("DOJ"), and the U.S. Department of Homeland Security ("DHS", collectively, "the Government Parties").<sup>11</sup>

### III. DISCUSSION

#### A. Ownership Structure of TerreStar

4. TerreStar is majority owned (88.4%) and controlled by TerreStar Corporation ("TerreStar Corp."), a publicly traded Delaware corporation.<sup>12</sup> TerreStar Corp. holds its indirect ownership interest in TerreStar through TerreStar Corp.'s wholly-owned subsidiary, Motient Ventures Holding Inc. ("MVHI"), which is also organized in Delaware.<sup>13</sup> The remaining ownership interests in TerreStar (11.6%) are held as follows: (1) SkyTerra Investors LLC, formerly MSV Investors LLC ("SkyTerra Investors") (11.1%), (2) Continental Casualty Company (0.3%), and (3) Andy Africk (0.1%).<sup>14</sup> The sole member of SkyTerra Investors is SkyTerra Communications, Inc., a publicly traded Delaware corporation.<sup>15</sup> Continental Casualty Company is headquartered in Chicago, Illinois, and Andy Africk is a U.S. citizen.<sup>16</sup>

5. TerreStar states that no individual or group of individuals has *de jure* or *de facto* control of TerreStar Corp.<sup>17</sup> According to TerreStar, TerreStar Corp.'s largest shareholders are EchoStar Corporation ("EchoStar") (21.55% voting and 16.41% equity interest) and two Harbinger Capital Partners Funds (the "Harbinger Funds") (in the aggregate, 32.16% voting and 43.58% equity interest).<sup>18</sup> TerreStar

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<sup>10</sup> See Sprint Nextel Reply to TerreStar Opposition (filed May 5, 2009) ("Sprint Reply"). See also Letter from Trey Hanbury, Director, Government Affairs, Sprint Nextel Corporation, to Marlene H. Dortch, Secretary, FCC (filed May 13, 2008) (detailing *ex parte* meeting between Sprint Nextel and International Bureau staff on May 12, 2008).

<sup>11</sup> U.S. Department of Justice and the Department of Homeland Security, Agreement on Petition for Declaratory Ruling (dated December 18, 2009) ("Agreement"). The Agreement is attached to this *Order and Declaratory Ruling* as Appendix B.

<sup>12</sup> See Petition at 3; July 7, 2009 Supplement at Exhibit 1, Response to Question 3.

<sup>13</sup> See July 7, 2009 Supplement at 1. On September 30, 2009, the Commission granted its consent to the *pro forma* transfer of control of TerreStar's gateway license located in North Las Vegas, Nevada. By letter dated November 20, 2009, TerreStar requested an extension of time to consummate the *pro forma* transfer of control from November 29, 2009, through December 31, 2009. Upon consummation, two new holding companies, wholly owned by TerreStar Corp., will be inserted into the organizational structure between TerreStar Corporation and Motient Ventures Holding Inc. ("MVHI"). The two new holding companies, TerreStar Holdings Inc. and MVH Holdings Inc., are both incorporated in the state of Delaware. An updated organizational chart showing TerreStar's post consummation organizational structure is attached to this *Order and Declaratory Ruling* as Appendix A.

<sup>14</sup> *Id.* at Exhibit 1, Response to Question 3.

<sup>15</sup> See July 7, 2009 Supplement at Exhibit 1, Response to Question 3.

<sup>16</sup> See July 7, 2009 Supplement at Exhibit 1.

<sup>17</sup> See July 7, 2009 Supplement at Exhibit 1, Response to Question 5. According to TerreStar, TerreStar Corp.'s shareholders do not have any shareholder agreements addressing the election of directors or other matters voted upon by shareholders. *Id.*

<sup>18</sup> See August 21, 2009 Supplement, Response to Question 4; July 7, 2009 Supplement at 8. The Harbinger Funds consist of Harbinger Capital Partners Master Fund I, Ltd. and Harbinger Capital Partners Special Situations Fund, L.P. July 7, 2009 Supplement at 8 n.15. We note that since this filing, the ownership percentages have changed. See *infra* ¶¶ 14-18.

Corp. has an eight person board of directors. No shareholder of TerreStar Corp. has the right to designate board members, but EchoStar, as the holder of the sole share of Series C preferred stock, has the right to nominate two directors, and Harbinger Capital Partners Master Fund I, Ltd., as the holder of the sole share of Series D preferred stock, also has the right to nominate two directors.<sup>19</sup>

## B. Section 310 Foreign Ownership Review

6. TerreStar requests a declaratory ruling that the public interest would be served by permitting it to have indirect foreign equity and voting interests above the 25 percent benchmark set forth in section 310(b)(4) of the Act.<sup>20</sup> In addition, TerreStar requests approval to have up to and including an additional aggregate 25 percent indirect equity and/or voting interests from foreign individuals or entities without seeking further Commission approval under section 310(b)(4).<sup>21</sup> For the reasons stated below, we find that the public interest would not be served by prohibiting indirect foreign ownership of TerreStar in excess of 25 percent, subject to certain conditions.

### 1. Legal Standard for Foreign Ownership of Radio Licensees

7. We review the foreign ownership of TerreStar under section 310(b)(4) of the Act and the Commission's foreign ownership policies adopted in the *Foreign Participation Order*.<sup>22</sup> As part of our foreign ownership analysis, we consider any national security, law enforcement, foreign policy, or trade policy concerns raised by the foreign investment.<sup>23</sup> Relying on Commission precedent, we find that the ownership of TerreStar does not raise any issues under section 310(a) or 310(b)(1)-(3) of the Act.<sup>24</sup> Our analysis focuses on issues raised under section 310(b)(4).

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<sup>19</sup> See July 7, 2009 Supplement at Exhibit 1, Response to Question 5. Two individuals who were nominated by EchoStar Corporation ("EchoStar") have been elected and serve on TerreStar Corp.'s board of directors. Two individuals who were nominated by Harbinger Capital Partners Master Fund I, Ltd. ("Harbinger Master Fund") have been elected and serve on TerreStar Corp.'s board of directors.

<sup>20</sup> 47 U.S.C. § 310(b)(4).

<sup>21</sup> See Petition at 1.

<sup>22</sup> 47 U.S.C. § 310(b)(4); *Rules and Policies on Foreign Participation Order in the U.S. Telecommunications Market*, IB Docket Nos. 97-142, 95-22, Report and Order and Order on Reconsideration, FCC 97-398, 12 FCC Rcd 23891 (1997) ("*Foreign Participation Order*"), Order on Reconsideration, FCC 00-339, 15 FCC Rcd 18158 (2000).

<sup>23</sup> See *Foreign Participation Order*, 12 FCC Rcd at 23918-21, ¶¶ 59-66. In assessing the public interest, we consider the record and accord the appropriate level of deference to Executive Branch expertise on these issues. See *id.*

<sup>24</sup> Section 310(a) of the Act prohibits any radio license from being "granted to or held by" a foreign government or its representative. 47 U.S.C. § 310(a). In this case, no foreign government or its representative will hold the subject radio licenses. Section 310(b)(1)-(2) of the Act prohibits common carrier, broadcast and aeronautical fixed or aeronautical en route radio licenses from being "granted to or held by" aliens, or their representatives, or foreign corporations. 47 U.S.C. § 310(b)(1)-(2). We find that no alien, representative, or foreign corporation will hold the common carrier radio licenses in this case. Accordingly, we find that proposed transaction is not inconsistent with the foreign ownership provisions of section 310(a) or 310(b)(1)-(2) of the Act. See *Applications of VoiceStream Wireless Corp., Powertel, Inc., Transferors, and Deutsche Telekom AG, Transferee*, IB Docket No. 00-187, Memorandum Opinion and Order, 16 FCC Rcd 9779, 9804-9809, ¶¶ 38-48. Additionally, because the foreign investment in TerreStar is held through its direct and indirect controlling U.S. parent companies, issuance of a common carrier radio license to TerreStar would not trigger section 310(b)(3) of the Act, which places a 20% limit on alien, foreign corporate or foreign government ownership of entities that themselves hold common carrier, broadcast and aeronautical fixed or aeronautical en route Title III licenses. Compare 47 U.S.C. § 310(b)(3) with § 310(b)(4). See *Request for Declaratory Ruling Concerning the Citizenship Requirements of Sections 310(b)(3) and* (continued....)

8. Section 310(b)(4) of Act establishes a 25 percent benchmark for investment by foreign individuals, corporations, and governments in U.S.-organized entities that control U.S. common carrier radio licensees. This section also grants the Commission discretion to allow higher levels of foreign ownership if it determines that such ownership is not inconsistent with the public interest.<sup>25</sup> The presence of aggregated alien equity or voting interests in a common carrier licensee's U.S. parent in excess of 25 percent triggers the applicability of section 310(b)(4)'s statutory benchmark.<sup>26</sup> Once the benchmark is triggered, section 310(b)(4) directs the Commission to determine whether the "public interest will be served by the refusal or revocation of such license."<sup>27</sup>

9. In the *Foreign Participation Order*, the Commission concluded that the public interest would be served by permitting greater investment by individuals or entities from World Trade Organization ("WTO") Member countries in U.S. common carrier and aeronautical fixed and aeronautical en route radio licensees.<sup>28</sup> Therefore, with respect to indirect foreign investment from WTO Members, the Commission adopted a rebuttable presumption that such investment generally raises no competitive concerns.<sup>29</sup> In evaluating requests for approval of foreign ownership interests under section 310(b)(4), the Commission uses a "principal place of business" test to determine the nationality or "home market" of foreign investors.<sup>30</sup>

10. In light of Commission policies adopted in the *Foreign Participation Order*, we begin our evaluation of the indirect foreign ownership of TerreStar under section 310(b)(4) by calculating the foreign voting and equity interests that are held in its indirect U.S. parent company, TerreStar Corp. We then determine whether these foreign interests properly are ascribed to individuals or entities that are

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(4) of the Communications Act of 1934, as amended, Declaratory Ruling, 103 F.C.C. 2d 511 (1985) ("Wilner & Scheiner I"), recon. in part, 1 FCC Rcd 12 (1986).

<sup>25</sup> 47 U.S.C. § 310(b)(4). The calculation of foreign ownership interests under section 310(b)(4) is a two-pronged analysis in which the Commission examines separately the equity interests and the voting interests in the licensee's direct or indirect parent. See *BBC License Subsidiary L.P.*, Memorandum Opinion and Order, 10 FCC Rcd 10968, 10973, ¶ 22 (1995) ("*BBC License Subsidiary*"). The Commission calculates the equity interest of each foreign investor in the parent and then aggregates these interests to determine whether the sum of the foreign equity interests exceeds the statutory benchmark. Similarly, the Commission calculates the voting interest of each foreign investor in the parent and aggregates these voting interests. *Id.* at 10972, ¶ 20, 10973-74, ¶¶ 22-25.

<sup>26</sup> See *id.* at 10973-74, ¶ 25.

<sup>27</sup> 47 U.S.C. § 310(b)(4).

<sup>28</sup> *Foreign Participation Order*, 12 FCC Rcd at 23896, 23913, 23940 ¶¶ 9, 50, 111-112.

<sup>29</sup> *Id.* at 23913, 23940 ¶¶ 50, 111-112. The Commission stated, in the *Foreign Participation Order*, that it will deny an application if it finds that more than 25% of the ownership of an entity that controls a common carrier radio licensee is attributable to parties whose principal place(s) of business are in non-WTO Member countries that do not offer effective competitive opportunities to U.S. investors in the particular service sector in which the applicant seeks to compete in the U.S. market, unless other public interest considerations outweigh that finding. See *id.* at 23946 ¶ 131.

<sup>30</sup> To determine a foreign entity's home market for purposes of the public interest determination under section 310(b)(4), the Commission will identify and balance the following factors: (1) the country of a foreign entity's incorporation, organization, or charter; (2) the nationality of all investment principals, officers, and directors; (3) the country in which the world headquarters is located; (4) the country in which the majority of the tangible property, including production, transmission, billing, information, and control facilities, is located; and (5) the country from which the foreign entity derives the greatest sales and revenues from its operations. *Foreign Participation Order*, 12 FCC Rcd at 23941 ¶ 116 (citing *Market Entry and Regulation of Foreign-Affiliated Entities*, Report and Order, 11 FCC Rcd 3873, 3951 ¶ 207 (1995)).

citizens of, or have their principal places of business in, WTO Member countries. The purpose of our inquiry is to determine whether at least 75 percent of TerreStar's voting and equity interests are held by individuals that are citizens of, or entities that have their principal places of business in, the United States and other WTO Member countries.<sup>31</sup>

11. In calculating attributable alien equity interests in a parent company, the Commission uses a multiplier to dilute the percentage of each investor's equity interest in the parent company when those interests are held through intervening companies. The multiplier is applied to each link in the vertical ownership chain, regardless of whether any particular link in the chain represents a controlling interest in the company positioned in the next lower tier.<sup>32</sup> By contrast, in calculating alien voting interests in a parent company, the multiplier is not applied to any link in the vertical ownership chain that constitutes a controlling interest in the company positioned in the next lower tier.<sup>33</sup>

## 2. Attribution of Foreign Ownership Interests

12. TerreStar Corp. is a widely held, publicly traded company organized in Delaware. As of April 30, 2009, TerreStar Corp. had 182,817,596 shares issued and outstanding consisting of 139,202,289 shares of common, voting stock and 43,615,307 shares of preferred, non-voting stock.<sup>34</sup> Most of TerreStar Corp.'s total capital stock (74.23% of common and preferred stock) is held in "street name" brokerage accounts.<sup>35</sup> The remaining shares of total capital stock (25.77% of common and preferred stock) are held by "registered shareholders."<sup>36</sup> According to TerreStar Corp., it is unable to determine the

<sup>31</sup> See *supra* n.28.

<sup>32</sup> See *BBC License Subsidiary*, 10 FCC Rcd at 10973-74, ¶¶ 24-25.

<sup>33</sup> See *id.* at 10973, ¶ 23; see also *Wilner & Scheiner I*, 103 FCC 2d at 522, ¶ 19. When evaluating foreign voting interests in the U.S. parent company of a common carrier licensee, it is possible that multiple investors will be treated as holding the same voting interest in a U.S. parent company where the investment is held through multiple intervening holding companies. Our purpose in identifying the citizenship of the specific individuals or entities that hold these interests is not to increase the aggregate level of foreign investment, but rather to determine whether any particular interest that a foreign investor proposes to acquire raises potential risks to competition or other public interest concerns, such as national security or law enforcement concerns. See *Foreign Participation Order*, 12 FCC Rcd at 23940-41, ¶¶ 111-15.

<sup>34</sup> The number of shares of preferred, non-voting stock are stated throughout this *Order and Declaratory Ruling* on an as-converted basis (*i.e.*, as if converted to common stock) using the equivalence ratios reflected in the conversion rights of the preferred shares. See August 21, 2009 Supplement, Response to Question 1. The spreadsheet attached to the October 27, 2009 Supplement ("October 27, 2009 spreadsheet") specifies the conversion ratios and the number of preferred shares for three (3) of the five (5) of TerreStar's classes of preferred stock on a pre-conversion and post-conversion basis (Series C and Series D classes of preferred stock are not convertible). Of the classes of preferred non-voting stock that are convertible, Series A and Series B are convertible into common stock at a rate of 1 to 33.3 for a total share number of 13,615,305. The total number of shares of Series E preferred non-voting stock, convertible into common stock at a rate of 1 to 25, is 1,200,000, bringing the total shares of preferred non-voting stock, once converted to common stock, to 43,615,305. The October 27, 2009 spreadsheet also lists TerreStar's: (1) total number of shares of voting, common stock and (2) total number of shares of non-voting, preferred stock. For both the common and preferred stock, the spreadsheet lists separately the number of shares held by U.S. investors and by foreign investors broken down by the number of: (1) U.S. registered shares; (2) foreign registered shares; (3) U.S. street name shares; (4) foreign street name shares; (5) undetermined street name shares; and (6) street name shares ascribed to investors from non-WTO Member countries. October 27, 2009 spreadsheet.

<sup>35</sup> Shares held in "street name" are registered on a corporation's books in the name of a third party, which typically means the shareholder's broker. See July 7, 2009 Supplement, Declaration of Douglas Brandon, General Counsel and Secretary, TerreStar Corporation ("Brandon Declaration") at ¶ 4.

<sup>36</sup> "Registered shareholders" hold their shares in their own name on the corporation's books. *Id.*

identity of the beneficial owners of its shares held in “street name,” except to the extent it has been able to identify specific shareholdings as a result of shareholder litigation, financing transactions, proxy votes, and reports filed with the Securities and Exchange Commission (“SEC”) by the company’s largest shareholders.<sup>37</sup>

13. In an effort to identify all beneficial owners of its shares held in street name, TerreStar Corp. retained the services of Broadridge Financial Solutions (“Broadridge”), a securities services firm. On behalf of TerreStar Corp., Broadridge contacted brokers holding TerreStar Corp. shares in street name and asked that the beneficial owners of the shares be identified. TerreStar Corp. states that the request resulted in the identification of the beneficial ownership of only a limited percentage of TerreStar Corp.’s shares. TerreStar Corp. explains that most of the beneficial owners of TerreStar Corp. are objecting beneficial owners (“OBOs”), *i.e.*, under SEC rules and policies, they object to release of their names and addresses. And, according to TerreStar Corp., it lacks authority to compel financial institutions to release such information. TerreStar Corp. thus concludes that it cannot determine the citizenship of its beneficial owners by querying a random sample of shareholders. Broadridge was able to obtain aggregate information, however, consistent with OBO restrictions, as to the addresses of the beneficial owners of TerreStar Corp. shares held in street name. Based on this information, TerreStar Corp. has submitted for the record the percentage of its shares that are owned by persons or entities with U.S. addresses, addresses in other WTO Member countries, and addresses in non-WTO Member countries.<sup>38</sup> As we discuss below, we recognize that TerreStar Corp. has undertaken numerous steps and appears to have exhausted other readily-available means to ascertain the citizenship of its beneficial owners for the purpose of demonstrating compliance with section 310(b)(4) of the Act and the Commission’s foreign ownership policies. Therefore, we find it reasonable to accept TerreStar Corp.’s reliance on the addresses of the beneficial owners of TerreStar Corp.’s shares as a proxy for their citizenship in this particular case.<sup>39</sup>

14. We calculate below the percentage of TerreStar Corp.’s voting stock and total capital stock (equity) held by foreign investors based on the address-of-record information obtained by Broadridge, information TerreStar Corp. has gleaned from its corporate share registry, and information TerreStar Corp. has obtained as a result of shareholder litigation, financing transactions, proxy votes, and reports filed with the SEC. The granular data that TerreStar Corp. has collected from these various sources is presented in spreadsheet form in the October 27, 2009 Supplement to the Petition.

15. *Common Stock (Voting).* As indicated in the October 27, 2009 spreadsheet, TerreStar Corp. has 39,202,289 shares of voting, common stock. The following entities hold, in the aggregate, 58.81 percent of TerreStar Corp.’s voting, common stock: Harbinger Capital Partners Master Fund I, Ltd. (“Harbinger Master Fund”) (28.25%); Harbinger Capital Partners Special Situations Fund, L.P. (“Harbinger Special Situations Fund”) (2.84%); EchoStar (21.55%);<sup>40</sup> and SOLA Ltd. (approximately

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<sup>37</sup> See July 7, 2009 Supplement, Brandon Declaration at ¶ 6. TerreStar Corp. reviewed filings of its shareholders with the SEC. In general, persons acquiring an interest in excess of 5% of any class of TerreStar Corp.’s stock must disclose their interest in filings with the SEC.

<sup>38</sup> The report that Broadridge prepared for TerreStar Corp. is attached to the August 21, 2009 Supplement. The report covers TerreStar Corp.’s voting, common stock and Series B non-voting, preferred stock. TerreStar Corp. knows the identity of all holders of its Series A, C, D, and E non-voting, preferred stock. See *infra* ¶ 17.

<sup>39</sup> See *infra* ¶ 22.

<sup>40</sup> According to TerreStar Corp., EchoStar holds 30 million voting, common shares in street name. See October 27, 2009 spreadsheet. These shares constitute 21.55% of TerreStar Corp.’s voting shares (30,000,000 voting shares divided by 139,202,289 total voting shares). August 21, 2009 Supplement, n.6. and Response to Question 5.

6.17%) (“SOLA”).<sup>41</sup> All of these entities are organized in the United States with the exception of Harbinger Master Fund and SOLA, which are organized in the Cayman Islands.<sup>42</sup>

16. The remaining 41.19 percent of TerreStar Corp.’s shares of voting, common stock are widely held, primarily in street name.<sup>43</sup> Based on the Broadridge report and TerreStar Corp.’s review of its share registry,<sup>44</sup> we calculate that 32.24 percent of its voting shares are held by beneficial owners with U.S. addresses and 7.33 percent of its voting shares are held by beneficial owners with foreign addresses, of which only 260 shares (<0.01 %) have an address in a non-WTO Member country (specifically, Monaco). TerreStar could not determine a beneficial owner address for 1.62 percent of its voting shares. Consistent with Commission precedent, we treat this unidentified 1.62 percent voting interest as non-WTO Member investment.<sup>45</sup>

17. *Total Capital Stock (Equity)*. TerreStar Corp. has 182,817,596 shares of total capital stock, consisting of the 139,202,289 shares of voting, common stock and 43,615,307 shares of non-voting, preferred stock.<sup>46</sup> According to TerreStar Corp., its voting, common shares and non-voting, preferred shares have different values, as is reflected by the fact that each convertible preferred share can be converted into more than one common share.<sup>47</sup> Using the conversion ratios provided by TerreStar Corp., which reflect the conversion rights of its preferred shares, we find that the following entities hold, in the aggregate, 68.39 percent of TerreStar Corp.’s total capital stock (equity): Harbinger Master Fund

<sup>41</sup> TerreStar Corp. calculated SOLA’s 6.17% voting interest based on a proxy submitted to TerreStar Corp. representing 8,586,971 voting shares. The total capital stock figure is based on SOLA’s common stock holding and on notes and convertible preferred stock that SOLA, in an SEC filing, reported are convertible into 5,263,805 shares of common stock. Because the SEC filing does not provide a breakout between the convertible notes and the convertible preferred stock held by SOLA, TerreStar Corp. has assumed a worst case basis that all of SOLA’s convertible holdings are held in the form of convertible preferred stock. According to TerreStar Corp., it is possible that SOLA holds additional shares in street name that are not known to TerreStar Corp. because they were not identified on SOLA’s proxy. SOLA holds its shares in street name (SOLA is not on the list of registered shareholders), and SOLA must be an objecting beneficial owner, because it does not appear on TerreStar Corp.’s list of non-objecting beneficial owners. See August 21, 2009 Supplement, Response to Question 4; October 27, 2009 spreadsheet. See also *supra* ¶ 13.

<sup>42</sup> See August 21, 2009 Supplement, Responses to Question 6 and Question 9.

<sup>43</sup> See October 27, 2009 spreadsheet (indicating that, of the 41.19% voting shares that are widely held, 36.09% are held in street name and the remaining 5.10% are held by registered shareholders). See also *supra* n.36 (definition of registered shareholders).

<sup>44</sup> TerreStar Corp. has determined from its review of its share registry that employees and directors of TerreStar Corp. hold approximately 2.06% of its voting shares. TerreStar Corp. believes that all but two of these employees and directors are citizens of the United States. One director is a citizen of Canada and holds 30,000 shares of registered stock. One employee is a citizen of the United Kingdom and holds 3,000 shares of registered stock. See August 21, 2009 Supplement, Response to Question 6. See also *supra* n.42.

<sup>45</sup> See, e.g., *Mobile Satellite Ventures Subsidiary LLC and SkyTerra Communications, Inc. Petition for Declaratory Ruling Under Section 310(b) of the Communications Act of 1934, as Amended; Harbinger Capital Partners Master Fund I, Ltd. and Harbinger Capital Partners Special Situations Fund, L.P. Petition for Expedited Action for Declaratory Ruling Under Section 310(b) of the Communications Act of 1934, as Amended*, Order and Declaratory Ruling, FCC 08-77, 23 FCC Rcd 4436, 4457 Appendix B ¶ 15 n.95 (2008).

<sup>46</sup> See *supra* ¶ 12. In order to calculate the *pro rata* equity interests held by TerreStar Corp. shareholders for purposes of our section 310(b)(4) foreign ownership analysis, we consider all of TerreStar Corp.’s issued and outstanding stock, voting and non-voting. As calculated above, the total number of shares of preferred non-voting stock, when converted into common stock, is 43,615,305. See *supra* n.34.

<sup>47</sup> See August 21, 2009 Supplement, Response to Question 1.

(36.00%);<sup>48</sup> Harbinger Special Situations Fund (6.76%); EchoStar (16.41%);<sup>49</sup> SOLA (approximately 7.58%);<sup>50</sup> and various investment funds affiliated with Highland Capital Management, L.P. (1.64%).<sup>51</sup>

18. The remaining 31.61 percent of TerreStar Corp.'s total capital stock (equity) consists of TerreStar Corp.'s shares of voting, common stock that are widely held, primarily in street name; and shares of Series B non-voting, preferred stock, as converted, other than the Series B shares attributed to Harbinger Master Fund<sup>52</sup> and SOLA.<sup>53</sup> We calculate that U.S. and foreign ownership of its voting, common stock constitutes 24.55 percent and 5.58 percent of its total capital stock, respectively. As discussed above, only 260 of the foreign-owned voting shares have an address in a non-WTO Member country, which constitutes a *de minimis* amount (<0.01 percent of TerreStar Corp.'s total capital stock).<sup>54</sup> The shares of voting, common stock for which Broadridge could not obtain the beneficial owner's address constitute 1.23 percent of TerreStar Corp.'s total capital stock, which we treat as non-WTO Member investment.<sup>55</sup>

19. Based on the ownership information submitted by TerreStar Corp., we find it reasonable to conclude that at least 75 percent of its voting and equity interests are held by individuals that are citizens of, or entities that have their principal places of business in, the United States and other WTO Member countries.<sup>56</sup> Harbinger Master Fund and Harbinger Special Situations Fund hold, in the

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<sup>48</sup> The October 27, 2009 spreadsheet does not indicate whether the preferred shares denominated as "Harbinger Series B" shares are held by Harbinger Master Fund or also by Harbinger Special Situations Fund. We therefore assume, on a worst case basis, that the foreign-organized Harbinger Master Fund holds all of the 4,894,143 shares listed on the spreadsheet as "Harbinger Series B" shares. Harbinger Master Fund also holds the sole share of Series D preferred stock and 21,600,000 shares of Series E preferred stock.

<sup>49</sup> The 16.41% figure is based for the most part on EchoStar's 30 million shares of voting, common stock (30,000,000 voting, common shares divided by 182,817,596 shares of total capital stock). EchoStar also holds the sole share of TerreStar Corp.'s Series C non-voting preferred stock, which, according to TerreStar Corp., entitles EchoStar to nominate two TerreStar Corp. board members. See July 7, 2009 Supplement, Exhibit 1, Response to Question 5; October 27, 2009 spreadsheet.

<sup>50</sup> This figure is based on SOLA's known common stock holdings (which consist of 8,586,971 shares of common stock and constitute 4.70% of TerreStar Corp.'s total capital stock) and on notes and Series B preferred stock that SOLA, in an SEC filing, reported are convertible into an additional 5,263,805 shares of common stock (which would constitute an additional 2.88% of TerreStar Corp.'s total capital stock). See August 21, 2009 Supplement, Response to Question 4 n.7. We note that TerreStar Corp. could not determine from the SEC filing the portion of these additional shares that reflect only SOLA's Series B preferred shareholdings (as opposed to the notes held by SOLA, which we would not normally include in our section 310(b)(4) calculations until actually converted). TerreStar Corp. therefore assumed, on a "worst case" basis, that all 5,263,805 shares reported to the SEC reflect SOLA's Series B preferred shareholdings for purposes of calculating the equity interest that SOLA, a foreign-organized entity, holds in TerreStar Corp. See *id.*

<sup>51</sup> See October 27, 2009 spreadsheet (listing Highland as holding 2,999,700 shares (as converted) of preferred non-voting Series A stock).

<sup>52</sup> See *supra* n.48.

<sup>53</sup> See *supra* n.50.

<sup>54</sup> See *supra* ¶ 16.

<sup>55</sup> See *supra* n.45 and accompanying text.

<sup>56</sup> As explained above, the Commission has stated that it will deny an application if it finds that more than 25% of the ownership of an entity that controls a common carrier radio licensee is attributable to parties whose principal place(s) of business are in non-WTO Member countries that do not offer effective competitive opportunities to U.S. investors in the particular service sector in which the applicant seeks to compete in the U.S. market, unless other (continued....)

aggregate, 31.09 percent of TerreStar Corp.'s voting, common stock and 42.76 percent of its total capital stock (equity). Although Harbinger Master Fund is organized in the Cayman Islands,<sup>57</sup> we have determined previously that Harbinger Master Fund and the U.S.-organized Harbinger Special Situations Fund have their principal places of business in the United States or the Cayman Islands, which is a WTO Member country. We also have determined previously that all but a *de minimis* portion of the investment in Harbinger Master Fund and Harbinger Special Situations Fund is held by individuals that are citizens of, or that principally conduct business in, WTO Member countries.<sup>58</sup> Accordingly, we find that the equity and voting interests held in TerreStar by Harbinger Master Fund and by Harbinger Special Situations Fund are properly ascribed to investors from the United States and other WTO Member countries.

20. We also find that Echostar, which holds 21.55 percent and 16.41 percent of TerreStar Corp.'s voting and total capital stock (equity) interests, has its principal place of business in the United States. It is organized in Nevada, its controlling shareholder, Charles W. Ergen, is a U.S. citizen<sup>59</sup> and all of its officers and directors are U.S. citizens. EchoStar is headquartered in Englewood, Colorado; the majority of its tangible property is located in the United States; and it derives the vast majority of its revenues from within the United States.<sup>60</sup> According to TerreStar Corp., EchoStar commissioned a broker survey of its shareholders (as of April 30, 2008). The results of that survey, combined with information from EchoStar's share registry, indicates that approximately 1.33 percent of its equity and 0.23 percent of its voting interests are held by foreign investors, including non-WTO investment that is less than 0.10 percent for both equity and voting interests.<sup>61</sup>

21. SOLA, which holds approximately 6.17 percent and 7.58 percent of TerreStar Corp.'s voting and equity interests, is an investment fund that is organized and has its world headquarters in the Cayman Islands, which is also its tax jurisdiction.<sup>62</sup> SOLA's investment decisions are directed by Solus Alternative Asset Management LP ("Solus Asset Management"), which is organized in the United

(Continued from previous page) \_\_\_\_\_  
public interest considerations outweigh that finding. See *supra* ¶ 9 n.27 (citing *Foreign Participation Order*, 12 FCC Rcd at 23946, ¶ 131).

<sup>57</sup> Shares held by or on behalf of Harbinger Master Fund and SOLA are properly counted as foreign for purposes of our section 310(b) calculations because these funds are organized in the Cayman Islands. We note that TerreStar Corp. listed these shares as U.S. shares in its October 27, 2009 spreadsheet and treated them as U.S. shares when it calculated its foreign voting and equity interests. Thus, we have calculated that TerreStar Corp. has a higher percentage of foreign voting interests (43.37%) and foreign equity interests (50.39%) than TerreStar Corp. has calculated (9% foreign voting interests and 8% foreign equity interests). See July 7, 2009 Supplement, as clarified in the October 27, 2009 spreadsheet (calculating TerreStar Corp.'s foreign ownership). Our calculations reflect the aggregate voting interests and the aggregate equity interests held by Harbinger Master Fund, SOLA, the foreign widely-held shares, and the undetermined shares. See *supra* ¶¶ 15-18.

<sup>58</sup> *Harbinger 2009 Order*, 24 FCC Rcd at ¶ 19. See also *2008 MSV Order*, 23 FCC Rcd at 4444, ¶ 18, Appendix B at 4454-57, ¶¶ 9-14. Passive investment from non-WTO Member countries constitutes approximately 0.59% of the voting interests and approximately 0.37% of the equity interests in Harbinger Master Fund. Applying the multiplier, we attribute to these non-WTO investors a 0.17% voting interest (0.59% x 28.25%) and a 0.13% equity interest (0.37% x 36.00%) in TerreStar.

<sup>59</sup> TerreStar Corp. states that, as of May 28, 2009, Mr. Ergen had an equity interest of approximately 54% in EchoStar and a voting interest of approximately 87.3%. See July 7, 2009 Supplement, Exhibit 1, Response to Question 7.

<sup>60</sup> *Id.*

<sup>61</sup> *Id.*

<sup>62</sup> See July 7, 2009 Supplement, Exhibit 1, Response to Question 9.

States.<sup>63</sup> The general partner of Solus Asset Management is Solus GP, LLC, a Delaware limited liability company. Christopher Pucillo, a U.S. citizen, is the managing member of Solus GP, LLC.<sup>64</sup> Although there is no information as to the citizenship of SOLA's investors, we find these other indicia sufficient to establish, for purposes of this proceeding, that SOLA principally conducts business in the United States. With respect to the 1.64 percent equity interest held by funds affiliated with Highland Capital Management, L.P., we also lack information as to the citizenship of fund investors or whether any of the funds are organized in a non-WTO Member country. The Highland funds are controlled, however, by Highland Capital Management, L.P., and its controlling principal, James Dondero, a U.S. citizen.<sup>65</sup> On this basis, and for purposes of this proceeding, we similarly find it reasonable to treat Highland's 1.64 equity interest in TerreStar Corp. as equity investment from the United States and/or other WTO Member countries.<sup>66</sup>

22. As to TerreStar Corp.'s remaining shares, which are widely held, we calculate that U.S. investors hold, in the aggregate, 32.4 percent and 24.55 percent of its voting and equity interests; and foreign investors from WTO Member countries (with the exception of 260 shares that round to 0.00 percent) hold an aggregate 7.33 percent voting interest and 5.58 percent of its equity interests. Shares for which TerreStar could not determine a beneficial owner address constitute a 1.62 percent voting interest and 1.23 percent equity interest, which we treat as non-WTO Member. Although the addresses of TerreStar Corp.'s beneficial owners - as recorded in TerreStar Corp.'s share registry and as provided to Broadridge by brokers holding shares for clients - do not prove the citizenship of those investors, we recognize that TerreStar Corp. has undertaken numerous steps and appears to have exhausted other readily-available means to ascertain the citizenship of its beneficial owners for the purpose of demonstrating compliance with section 310(b)(4) of the Act and the Commission's foreign ownership policies. We also note that the Commission previously approved the use of beneficial owner addresses, in two proceedings, *Verizon Wireless-Alltel*<sup>67</sup> and *Verizon Wireless-RCC*,<sup>68</sup> for the purpose of allowing Verizon Wireless to demonstrate compliance with its existing foreign ownership ruling.<sup>69</sup> For these reasons, we find it reasonable to accept TerreStar Corp.'s reliance on the addresses of the beneficial owners of TerreStar Corp.'s shares as a proxy for their citizenship in this particular case. We caution our licensees that our acceptance of street address as a proxy for citizenship in this particular case should not

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<sup>63</sup> *Id.*

<sup>64</sup> See July 7, 2009 Supplement, Exhibit 1, Response to Question 8.

<sup>65</sup> See also Highland Distressed Opportunities, Inc., Schedule 13D, at Appendix 1 (filed June 12, 2009) ("Highland 13D"), available at <http://www.sec.gov/Archives/edgar/data>.

<sup>66</sup> The record in this proceeding reflects the difficulties that U.S. public companies face in identifying the citizenship of their non-controlling, minority investors, including institutional investors, mutual funds, private equity funds and other investment vehicles that may accumulate capital from both U.S. and foreign sources.

<sup>67</sup> *Applications of Cellco Partnership d/b/a Verizon Wireless and Atlantis Holdings LLC For Consent to Transfer Control of Licenses, Authorizations, and Spectrum Manager and De Facto Transfer Leasing Arrangement*, WT Docket No. 08-95, Memorandum Opinion and Order and Declaratory Ruling, FCC 08-258, 23 FCC Rcd 17444, 17543-45, ¶¶ 226-29 (2008) ("*Verizon Wireless-Alltel*").

<sup>68</sup> *Applications of Cellco Partnership d/b/a Verizon Wireless and Rural Cellular Corporation For Consent to Transfer Control of Licenses, Authorizations, and Spectrum Manager Leases*, WT Docket No. 07-208, Memorandum Opinion and Order and Declaratory Ruling, FCC 08-181, 23 FCC Rcd 12463, 12524-26, ¶¶ 146-150 (2008) ("*Verizon Wireless-RCC*").

<sup>69</sup> Both of Verizon Wireless's general partners, Verizon Communications Inc. and Vodafone plc, are widely held, publicly traded companies. See *Verizon Wireless-Alltel*, 23 FCC Rcd at 17447-50, ¶¶ 5-8; *Verizon Wireless-RCC*, 23 FCC Rcd at 12467-68, ¶¶ 5-7.

be construed as an indication that we will do so in all cases in the future. FCC licensees with foreign ownership are reminded that their ownership must comply with requirements of section 310 of the Act and that they be prepared to demonstrate such compliance to the Commission as requested.

23. Based on the findings above, we conclude that TerreStar is entitled to a rebuttable presumption that the foreign ownership of its controlling U.S. parent, TerreStar Corp., in excess of the 25 percent benchmark in section 310(b)(4) of the Act does not pose a risk to competition in the U.S. market, and we find no credible evidence in the record to rebut this presumption.<sup>70</sup> We also determine in Section III.D. below that the Agreement among the Government Parties (*i.e.*, the Department of Justice and the Department of Homeland Security) and TerreStar addresses any national security and law enforcement concerns.

### C. Declaratory Ruling

24. Accordingly, this declaratory ruling permits TerreStar to have indirect foreign equity and voting interests in excess of the 25 percent benchmark in section 310(b)(4) of the Act as a result of foreign ownership interests held in its publicly traded, controlling U.S. parent, TerreStar Corp. This ruling is subject to the following conditions: First, TerreStar shall obtain prior approval before any foreign individual or entity, with the exception of Harbinger Master Fund, acquires individually an indirect equity and/or voting interest in TerreStar Corp. in excess of 25 percent. Second, TerreStar shall obtain prior Commission approval before TerreStar Corp.'s indirect equity or voting interests from non-WTO Member countries exceeds 25 percent.<sup>71</sup> Third, TerreStar shall obtain prior Commission approval before Harbinger Master Fund increases in shareholdings in TerreStar Corp. other than through purchases of TerreStar Corp. stock in the public market.

25. We emphasize that, as a Commission licensee, TerreStar has an affirmative duty to monitor its foreign equity and voting interests and to calculate these interests consistent with the attribution principles enunciated by the Commission.<sup>72</sup>

### D. National Security, Law Enforcement and Public Safety Concerns

26. When analyzing a petition for declaratory ruling in which foreign investment is involved, we also consider any national security, law enforcement, foreign policy, or trade policy concerns.<sup>73</sup> On

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<sup>70</sup> See *infra* Section IV.

<sup>71</sup> For purposes of the ruling issued in this *Order and Declaratory Ruling*, we attribute 1.79% and 1.36% of the voting and equity interests in TerreStar Corp. to investors from non-WTO Member countries. These amounts consist of a 1.62% voting interest and 1.23% equity interest in TerreStar Corp. for which it could not make a citizenship or principal place of business determination, and an additional 0.17% voting interest and 0.13% equity interest in TerreStar Corp. as a result of non-WTO investment in Harbinger Master Fund. See *supra* ¶¶ 16, 18.

<sup>72</sup> *Mobile Satellite Ventures Subsidiary LLC and SkyTerra Communications, Inc., Petition for Declaratory Ruling Under section 310(b) of the Communications Act of 1934, as Amended; Harbinger Capital Partners Master Fund I, Ltd. and Harbinger Capital Partners Special Situations Fund, L.P. Petition for Expedited Action for Declaratory Ruling Under section 310(b) of the Communications Act of 1934, as Amended*, Order and Declaratory Ruling, FCC 08-77, 23 FCC Rcd 4436, 4443, ¶ 16 (2008); *Verizon Communications, Inc., Transferor and America Movil, S.A. de C.V., Transferee, Application for Authority to Transfer Control of Telecomunicaciones de Puerto Rico, Inc. (TELPRI), WT Docket No. 06-113*, Memorandum Opinion and Order and Declaratory Ruling, FCC 07-43, 22 FCC Rcd 6195, 6225, ¶ 68 (2007).

<sup>73</sup> *Foreign Participation Order*, 12 FCC Rcd at 23918, ¶ 58; *Amendment of the Commission's Regulatory Policies to Allow Non-U.S. Licensed Space Stations to Provide Domestic and International Satellite Service in the United States*, IB Docket No. 96-111, FCC 97-399, 12 FCC Rcd 24094, 24170, ¶ 178 (1997) (“*Disco II Order*”).

December 22, 2009, the Department of Justice and the Department of Homeland Security filed a Petition to Adopt Conditions advising the Commission that they have no objection to grant of the captioned Petition for Declaratory Ruling provided that the Commission conditions its grant on compliance by the Petitioner with the Agreement, executed December 18, 2009, between the two agencies, on the one hand, and TerreStar Corporation, TerreStar Networks Inc., and their affiliates, on the other hand.<sup>74</sup> The Government Parties state that the Agreement is intended to enhance the protection of national security, law enforcement and public safety.<sup>75</sup> Under Commission precedent, we defer to Executive Branch expertise on national security and law enforcement issues.<sup>76</sup> Accordingly, we condition the grant of the Petition on compliance by TerreStar Corporation and TerreStar Networks Inc., and their respective subsidiaries and affiliates, with the commitments and undertakings set forth in the Agreement dated December 18, 2009.<sup>77</sup>

#### IV. SPRINT PETITION

27. The Sprint Petition alleges that TerreStar appears to have violated the foreign ownership limitations set forth in the Act and is not entitled to any presumption that exceeding these statutory limits is in the public interest.<sup>78</sup> Sprint Nextel also asserts that TerreStar will have an unfair competitive advantage over Sprint Nextel in providing wireless services in the 2 GHz band if TerreStar does not bear its fair share of the cost of clearing the band currently associated with broadcast auxiliary service (BAS).<sup>79</sup> Sprint Nextel is requesting that the Commission deny approval of TerreStar's foreign investment unless TerreStar provides assurances that it will pay its share of BAS relocation expenses.

28. According to TerreStar, the Sprint Petition does not address the merits of TerreStar's Petition because it neither raises an objection to the showing TerreStar made under section 310(b)(4) of the Act nor does it address the applicable legal standard under section 310(b)(4) of the Act.<sup>80</sup> TerreStar argues that the foreign ownership limits of section 310(b) of the Act apply to FCC licensees, and since TerreStar holds no radio licenses subject to Section 310(b) of the Act, then there can be no violation of Commission rules.<sup>81</sup> Finally, TerreStar claims that the Sprint Petition's band clearing arguments are addressed in another Commission proceeding and have nothing to do with the merits of TerreStar's Petition.

29. Sprint, in its Reply, alleges that TerreStar's request to exceed the foreign ownership limits poses a risk to competition because, if granted without appropriate conditions, it would allow a foreign-controlled company to offer services in the U.S. without complying with its regulatory obligation

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<sup>74</sup> Petition to Adopt Conditions; Letter from Greg Pinto, Director – RCO, U.S. Department of Homeland Security and Richard C. Sofield, U.S. Department of Justice, Director – Foreign Investment Review Staff, National Security Division, to Marlene H. Dortch, Secretary, FCC (dated December 22, 2009).

<sup>75</sup> See Petition to Adopt Conditions at 3; and Agreement at Article 7 and Exhibit A.

<sup>76</sup> See *Foreign Participation Order*, 12 FCC Rcd at 23918, ¶ 59, 23919-21, ¶¶ 61-66; *DISCO II Order*, 12 FCC Rcd 24094 at 24100, ¶ 15.

<sup>77</sup> The Agreement is attached to the *Order and Declaratory Ruling* as Appendix B; see *supra* n.11 and ¶ 3.

<sup>78</sup> See Sprint Petition at 1, 3.

<sup>79</sup> *Id.* at 1, 3-8.

<sup>80</sup> *Id.* at 2-3.

<sup>81</sup> See TerreStar Opposition at 4-5. TerreStar states the Petition was filed because it had applied for radio licenses, and a public interest determination must be made by the Commission prior to acting on TerreStar's applications.

either to relocate 2 GHz BAS licensees or pay its fair share of BAS relocation costs.<sup>82</sup> The Sprint Reply requests that the Commission should “condition” any grant of TerreStar’s request on the requirement that TerreStar pay its *pro rata* share of the total cost of relocating BAS operators through the completion of the BAS relocation process.<sup>83</sup>

30. This *Order and Declaratory Ruling* denies the Petition to Deny filed by Sprint Nextel on the basis that the approval of TerreStar’s Petition has little, if no bearing on BAS relocation costs, the subject of another Commission proceeding.<sup>84</sup> We also do not find merit in Sprint Nextel’s argument that TerreStar violated the foreign ownership limitations set forth under section 310(b) of the Act. The foreign ownership limitations under section 310(b) of the Act apply to FCC common carrier licenses and, pending Commission action on its common carrier license application, TerreStar only holds a non-common carrier license.<sup>85</sup>

#### V. ORDERING CLAUSES

31. Accordingly, IT IS ORDERED that, pursuant to section 310(b)(4) of the Communications Act of 1934, as amended, 47 § 310(b)(4), and pursuant to authority delegated to the International Bureau in section 0.261 of the Commission’s rules, 47 C.F.R. § 0.261, the Petition for Declaratory Ruling filed by TerreStar Networks Inc. IS GRANTED to the extent specified in this *Order and Declaratory Ruling*.

32. IT IS FURTHER ORDERED that pursuant to sections 4(i) and (j), 309, and 310(d) of the Communications Act of 1934, as amended, 47 U.S.C. §§ 154(i), (j), 309, 310(d), the Petition to Deny filed by Sprint Nextel Corporation is denied.

33. IT IS FURTHER ORDERED that this authorization is subject to compliance with the provisions of the Agreement attached hereto between TerreStar, on the one hand, and the Department of Justice (“DOJ”) and the Department of Homeland Security (“DHS”), on the other hand, dated December 18, 2009, which Agreement is intended to enhance the protection of U.S. national security, law enforcement, and public safety. Nothing in this Agreement is intended to limit any obligation imposed by Federal law or regulation.

34. IT IS FURTHER ORDERED that this *Order and Declaratory Ruling* SHALL BE EFFECTIVE upon release. Petitions for reconsideration under section 1.106 of the Commission’s rules, 47 C.F.R. § 1.106, may be filed within thirty days of the date of public notice of this order.

Federal Communications Commission

Mindel De La Torre  
Chief, International Bureau

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<sup>82</sup> See Sprint Reply at 1.

<sup>83</sup> *Id.* at 6.

<sup>84</sup> See *Improving Public Safety Communications in the 800 MHz Band*, WT Docket No. 02-55, Report and Order and Order and Further Notice of Proposed Rulemaking, FCC 09-49, 24 FCC Rcd 7904 (2009).

<sup>85</sup> See *supra* ¶ 2.

**APPENDIX A**

**TerreStar Ownership**

**APPENDIX B**

**Network Security Agreement, dated December 18, 2009**

## AGREEMENT

This AGREEMENT (“Agreement”) is made as of the Effective Date by and between TerreStar Corporation, a Delaware corporation, TerreStar Networks Inc., a Delaware corporation, and all of their Affiliates and subsidiaries (collectively “TerreStar”); on the one hand, and the U.S. Department of Justice (“DOJ”) and the U.S. Department of Homeland Security (“DHS”), on the other hand. (DOJ and DHS are referred to collectively as “the Government Parties,” and all of the Parties to this Agreement are referred to collectively as the “Parties.”)

## RECITALS

WHEREAS, U.S. communications systems are essential to the ability of the U.S. government to fulfill its responsibilities to the public to preserve the national security of the United States, to enforce the laws, and to maintain the safety of the public;

WHEREAS, the U.S. government has an obligation to the public to ensure that U.S. communications and related information are secure in order to preserve the national security of the United States, protect the privacy of U.S. persons and to enforce the laws of the United States;

WHEREAS, it is critical to the well-being of the nation and its citizens to maintain the viability, integrity, and security of the communication systems of the United States (*see, e.g.*, Executive Order 13231, Critical Infrastructure Protection in the Information Age, Presidential Decision Directive 63, Critical Infrastructure Protection, and Presidential Homeland Security Directive / HSPD-7, Critical Infrastructure Identification, Prioritization, and Protection);

WHEREAS, protection of Classified and Sensitive Information is also critical to U.S. national security;

WHEREAS, TerreStar Networks Inc. has filed applications with the Federal Communications Commission to license Mobile Earth Terminals (METs) and to provide Ancillary Terrestrial Component (ATC) service, and a petition seeking to permit TerreStar Networks Inc. to have indirect foreign equity and voting interests above 25 percent;

WHEREAS, TerreStar plans to construct and operate an integrated satellite/terrestrial mobile communications network using one or more geostationary satellites and two redundant, satellite gateways in Allan Park, Ontario, Canada, and North Las Vegas, Nevada, United States. It intends to use this network to provide mobile communications services to independent distributors who will in turn distribute such service to individual customers and may also in the future distribute such services to its own customers;

WHEREAS, TerreStar’s proposed service will enable users to send and receive data, voice, or other communications to and from mobile terminals from anywhere within the United States, and elsewhere;

WHEREAS, Domestic Communications sent and received via TerreStar’s proposed service other than Domestic Communications carried via terrestrial facilities will be routed by

TerreStar's network from mobile terminals within the United States to its TerreStar-1 satellite, which is licensed by Canada, and through one of the two gateway earth stations, one of which is in the United States and the other of which is in Canada;

WHEREAS, it is critical to the law enforcement, national security, and public safety interests of the United States government that such Domestic Communications, and any related Call-Associated Data, Transactional Data, or Subscriber Information are made available pursuant to Lawful U.S. Process, including but not limited to the conduct of a real-time lawfully authorized Electronic Surveillance, within the United States in a timely, secure, and reliable manner;

WHEREAS, the cooperation and assistance of TerreStar is necessary to ensure the above-mentioned critical interests, and to facilitate lawful access within the United States to certain information;

NOW THEREFORE, the Parties are entering into this Agreement to address certain U.S. national security, law enforcement, and public safety concerns with respect to the provision or facilitation of its proposed services in the United States.

#### ARTICLE 1: DEFINITION OF TERMS

As used in this Agreement:

- 1.1 "Affiliate" means any entity that TerreStar owns or Controls.
- 1.2 "Call-Associated Data" or "CAD" means any information relating to a communication or relating to the sender or recipient of that communication and includes, without limitation, subscriber identification, called party number, calling party number, start time, end time, call duration, feature invocation and deactivation, feature interaction, registration information, user location, diverted to number, conference party numbers, post cut-through dual-tone multifrequency (dialed digit extraction), in-band and out-of-band signaling, party add, drop and hold, and any other call-identifying information, as defined in 47 U.S.C. § 1001(2).
- 1.3 "Classified Information" shall have the meaning indicated in Executive Order 12958, as amended by Executive Order 13292, or any successor executive order, or the Atomic Energy Act of 1954, or any statute that succeeds or amends the Atomic Energy Act of 1954.
- 1.4 "Control" means the power, direct or indirect, whether or not exercised, and whether or not exercised or exercisable through the ownership of a majority or a dominant minority of the total outstanding voting securities of an entity, or by proxy voting, contractual arrangements, or other means, to determine, direct, or decide matters affecting an entity or facility; in particular, but without limitation, to determine, direct, take, reach or cause decisions regarding:
  - (a) the sale, lease, mortgage, pledge, or other transfer of any or all of the principal assets of the entity, whether or not in the ordinary course of business;
  - (b) the dissolution of the entity;

- (c) the closing and/or relocation of the production or research and development facilities of the entity;
- (d) the termination or non-fulfillment of contracts of the entity;
- (e) the amendment of the articles of incorporation or constituent agreement of the entity with respect to the matters described in Section 1.4(a) through (d); or
- (f) any obligations under this Agreement.

1.5 “Customer Proprietary Network Information” or “CPNI” is defined in 47 U.S.C. § 222(h)(1).

1.6 “De facto” and “de jure” control have the meanings provided in 47 C.F.R. § 1.2110.

1.7 “DHS” means the U.S. Department of Homeland Security.

1.8 “DOJ” means the U.S. Department of Justice.

1.9 “Domestic Communications” means (a) Wire Communications or Electronic Communications (whether stored or not) originating at one U.S. location and terminating at another U.S. location, and (b) the U.S. portion of a Wire Communication or Electronic Communication (whether stored or not) that originates from or terminates in the United States.

1.10 “Domestic Communications Infrastructure” means (a) transmission, switching, bridging and routing equipment (including software and upgrades) used by or on behalf of TerreStar to provide, process, direct, control, supervise or manage Domestic Communications; (b) facilities and equipment used by or on behalf of TerreStar that are physically located in the United States; and (c) facilities used by or on behalf of TerreStar to control the equipment described in (a) and (b) above. Domestic Communications Infrastructure does not include equipment or facilities used by service providers other than TerreStar or its Affiliates that are:

- (1) interconnecting communications providers; or
- (2) providers of services or content that are
  - (A) accessible using the communications services of TerreStar or its Affiliates, and
  - (B) available in substantially similar form and on commercially reasonable terms through communications services of companies other than TerreStar or its Affiliates.

The phrase “on behalf of” as used in this Section does not include entities with which TerreStar or any of its Affiliates has contracted for peering, interconnection, roaming, long distance, resale, or distribution of TerreStar Service.

- 1.11 “Effective Date” means the date this Agreement has been duly signed by all of the Parties, unless otherwise specified herein.
- 1.12 “Electronic Communication” has the meaning given it in 18 U.S.C. § 2510(12).
- 1.13 “Electronic Surveillance” means (a) the interception of wire, oral, or electronic communications as those terms are defined in 18 U.S.C. § 2510(1), (2), and (12), and electronic surveillance as defined in 50 U.S.C. § 1801(f); (b) access to stored wire or electronic communications, as referred to in 18 U.S.C. § 2701 *et seq.*; (c) acquisition of dialing, routing, addressing, or signaling information through pen register or trap and trace devices or other devices or features capable of acquiring such information pursuant to law as defined in 18 U.S.C. § 3121 *et seq.* and 50 U.S.C. § 1841 *et seq.*; (d) acquisition of location-related information concerning a service subscriber or facility; (e) preservation of any of the above information pursuant to 18 U.S.C. § 2703(f); and (f) access to, or acquisition, interception, or preservation of, wire, oral, or electronic communications or information as described in (a) through (e) above and comparable State laws.
- 1.14 “FCC” or “Commission” means the Federal Communications Commission.
- 1.15 “Foreign” where used in this Agreement, whether capitalized or lower case, means non-U.S.
- 1.16 “Governmental Authority” or “Governmental Authorities” mean any government, or any governmental, administrative, or regulatory entity, authority, commission, board, agency, instrumentality, bureau, or political subdivision and any court, tribunal, judicial, or arbitral body.
- 1.17 “Government Parties” means DOJ and DHS.
- 1.18 “Implementation Plan” is defined in Section 2.1 herein.
- 1.19 “Intercept” or “Intercepted” has the meaning defined in 18 U.S.C. § 2510(4).
- 1.20 “Lawful U.S. Process” means U.S. federal, state, or local Electronic Surveillance or other court orders, processes, or authorizations issued under U.S. federal, state, or local law for physical search or seizure, production of tangible things, or access to or disclosure of Domestic Communications, Call-Associated Data, Transactional Data, or Subscriber Information.
- 1.21 “MES” means a mobile earth station, a mobile earth terminal or “MET” (i.e., a hand-held, portable, or other mobile terminal capable of receiving and/or transmitting Wire Communications or Electronic Communications by satellite), and includes a mobile earth terminal capable of receiving and/or transmitting TerreStar services.
- 1.21 “Non-U.S.-Licensed MES” means a TerreStar MES other than a U.S.-Licensed MES.
- 1.22 “Outsourcing Contract” means a contract between TerreStar and an individual or entity to perform functions covered by this Agreement and related to Domestic Communications that are normally performed by employees of companies in the business of providing those communications services that TerreStar provides. Outsourcing Contract also includes any contract

to perform a specific activity that is required to be performed by TerreStar under the express terms of this Agreement. A contractor designated by TerreStar for operation of the U.S. POP required by this Agreement is referred to herein as an "Outsourcing Contractor."

1.23 "Party" or "Parties" have the meanings given them in the Preamble.

1.24 "Pro forma assignments" or "pro forma transfers of control" are transfers or assignments that do not involve a substantial change in ownership or control as provided by Section 63.24 of the FCC's Rules (47 C.F.R. § 63.24).

1.25 "Sensitive Information" means information that is not Classified Information regarding (a) the persons or facilities that are the subjects of Lawful U.S. Process, (b) the identity of the government agency or agencies serving such Lawful U.S. Process, (c) the location or identity of the line, circuit, transmission path, or other facilities or equipment used to conduct Electronic Surveillance pursuant to Lawful U.S. Process, (d) the means of carrying out Electronic Surveillance pursuant to Lawful U.S. Process, or (e) the type(s) of service, telephone number(s), records, communications, or facilities subjected to Lawful U.S. Process; as well as all other information that is not Classified Information but is designated in writing by an authorized official of a federal, state or local law enforcement agency or a U.S. intelligence agency as "Sensitive Information" of some type recognized by the agency involved. The designation "Sensitive" as used in this paragraph may refer to information marked or labeled "Official Use Only," "Limited Official Use Only," "Law Enforcement Sensitive," "Sensitive Security Information," "Sensitive but Unclassified," "Controlled Unclassified Information" or other similar designations, and all such information shall be deemed "Sensitive Information" for purposes of this Agreement.

1.26 "Subscriber Information" means information relating to subscribers or customers of TerreStar of the type referred to and accessible subject to procedures specified in 18 U.S.C. § 2703(c) or (d) or 18 U.S.C. § 2709. Such information shall also be considered Subscriber Information when it is sought pursuant to the provisions of other Lawful U.S. Process.

1.27 "TerreStar Service" means communications services provided via TerreStar's planned satellite and/or terrestrial mobile communications network.

1.28 “Transactional Data” means:

- (a) “call identifying information,” as defined in 47 U.S.C. § 1001(2), including without limitation the telephone number or similar identifying designator associated with a Domestic Communication;
- (b) any information possessed by TerreStar, or an entity acting on behalf of TerreStar, relating specifically to the identity and physical address of a customer or subscriber, or account payer, or the end-user of such customer or subscriber, or account payer, or associated with such person relating to all telephone numbers, domain names, Internet Protocol (“IP”) addresses, Uniform Resource Locators (“URLs”), other identifying designators, types of services, length of service, fees, usage including billing records and connection logs, and the physical location of equipment, if known and if different from the location information provided under (d) below;
- (c) the time, date, size, or volume of data transfers, duration, domain names, Media Access Control (“MAC”) or IP addresses (including source and destination), URL’s, port numbers, packet sizes, protocols or services, special purpose flags, or other header information or identifying designators or characteristics associated with any Domestic Communication, including electronic mail headers showing From: and To: addresses; and
- (d) as to any mode of transmission (including mobile transmissions), and to the extent permitted by U.S. laws, any information indicating as closely as possible the physical location to or from which a Domestic Communication is transmitted.

The term includes all records or other information of the type referred to and accessible subject to procedures specified in 18 U.S.C. § 2703(c) and (d) but does not include the content of any communication. The phrase “on behalf of” as used in this Section does not include entities with which TerreStar contracts for peering, interconnection, roaming, long distance, or resale of TerreStar Service.

1.29 “United States,” “US” or “U.S.” means the United States of America, including all of its States, districts, territories, possessions, commonwealths, and the special maritime and territorial jurisdiction of the United States (*see* 18 U.S.C. § 7).

1.30 “U.S. LES” means a land earth station facility, located in any state of the United States, that is involved with the transmission of satellite communications and meets all other applicable requirements of this Agreement.

1.31 “U.S.-Licensed MES” means an MES licensed by the FCC to TerreStar or TerreStar’s distributors and utilizing the TerreStar network, including to provide TerreStar Services.

1.32 “U.S. POP” or “POP” means a point of presence located in the United States through which communications are routed for purpose of switching and at which Electronic Surveillance can be conducted, and meeting all other applicable requirements of this Agreement.

1.33 “Wire Communication” has the meaning given it in 18 U.S.C. § 2510(1).

1.34 “TerreStar” means TerreStar Networks Inc., TerreStar Corporation, and all of their Affiliates and subsidiaries.

1.35 Other Definitional Provisions. Other capitalized terms used in this Agreement and not defined in this Article 1 shall have the meanings assigned them elsewhere in this Agreement. The definitions in this Agreement are applicable to the singular as well as the plural forms of such terms and to the masculine as well as to the feminine and neuter genders of such terms. Whenever the words “include,” “includes,” “including,” or “such as” are used in this Agreement, they shall be deemed to be followed by the words “without limitation.”

## ARTICLE 2: INFORMATION STORAGE AND ACCESS

2.1 Implementation Plan. Certain of the rights and obligations of the Parties are set forth in further detail in an Implementation Plan signed by TerreStar on November 24, 2009, which is hereby expressly incorporated in, and constitutes an integral part of, this Agreement. Wherever the term “Agreement” appears herein, it shall also be deemed to refer to and include the Implementation Plan.

2.2 Domestic Communications Infrastructure. Except to the extent and under conditions concurred in by the Government Parties in writing:

- (a) Point of Presence. TerreStar will ensure as specified in the Implementation Plan that transmitted Domestic Communications, and Call-Associated Data, and Transactional Data related to Domestic Communications that are carried by or on behalf of TerreStar are transmitted to or through a U.S. POP, at which Electronic Surveillance can be conducted pursuant to Lawful U.S. Process. TerreStar will ensure that TerreStar and/or any Outsourcing Contractor provides technical or other assistance to facilitate such Electronic Surveillance.
- (b) Communications of a Non-U.S.-Licensed MES. TerreStar shall configure its network such that pursuant to Lawful U.S. Process, Electronic Surveillance of a Non-U.S.-Licensed MES can be conducted in accordance with the Implementation Plan.

2.3 Compliance with Lawful U.S. Process. TerreStar employees or agents in the United States, including any Outsourcing Contractor, shall have unconstrained authority to comply, in an effective, efficient, and unimpeded fashion, with Lawful U.S. Process. Such employees or agents will further have such authority with regard to the following, as applicable:

- (a) the orders of the President in the exercise of his/her authority under § 706 of the Communications Act of 1934, as amended (47 U.S.C. § 606), and under § 302(e) of the Aviation Act of 1958 (49 U.S.C. § 40107(b)) and Executive Order 11161 (as amended by Executive Order 11382); and

- (b) National Security and Emergency Preparedness rules, regulations and orders issued pursuant to the Communications Act of 1934, as amended (47 U.S.C. § 151 *et seq.*).

2.4 Information Storage and Access. TerreStar shall make the following data and communications, if stored by or on behalf of TerreStar for any reason, available in the United States:

- (a) Domestic Communications;
- (b) any Wire Communications or Electronic Communications received by, intended to be received by, or stored in the account associated with a U.S.-Licensed MES, or transmitted through a U.S. LES, or routed through a U.S. POP to or from a customer or subscriber of TerreStar;
- (c) Transactional Data and Call-Associated Data relating to Domestic Communications;
- (d) Subscriber Information concerning the customers and subscribers of services using U.S.-Licensed MESs, or who are known to be domiciled or holding themselves out as being domiciled in the United States, as well as Subscriber Information related to any Domestic Communication transmitted through a U.S. LES or routed through a U.S. POP; and
- (e) Billing records relating to customers and subscribers of services using U.S.-Licensed MESs, or customers and subscribers who are known to be domiciled or are holding themselves out as being domiciled in the United States, as well as billing records related to any Domestic Communication transmitted through a U.S. LES or routed through a U.S. POP, for so long as such records are kept, in the event that TerreStar has or otherwise maintains any such billing records.

The phrase “on behalf of” as used in this Section does not include entities with which TerreStar has contracted for peering, interconnection, roaming, long distance, resale, or distribution of TerreStar Service.

2.5 Restriction on Storage Outside the U.S. TerreStar shall ensure that the data and communications described in Section 2.4 of this Agreement are not stored outside of the United States unless:

- (a) such storage is based strictly on *bona fide* commercial reasons weighing against storage in the United States; and
- (b) the required notice has been given to the Government Parties pursuant to Section 5.9 of this Agreement.

2.6 Avoidance of Mandatory Destruction. TerreStar shall ensure that the data and communications described in Section 2.4 of this Agreement are stored in a manner not subject to mandatory destruction under any foreign laws, if such data and communications are stored by or on behalf of TerreStar for any reason.

2.7 Billing Records. To the extent that any billing records are generated or maintained by TerreStar relating to customers and subscribers of services using U.S.-Licensed MESSs, TerreStar shall store all such billing records for at least eighteen (18) months and shall make such records available in the United States.

2.8 Storage Pursuant to 18 U.S.C. § 2703(f). Upon a request made pursuant to 18 U.S.C. § 2703(f) by a Governmental Authority within the United States to preserve any information in the possession, custody, or control of TerreStar, including any information that is listed in Section 2.4 above, TerreStar shall store such preserved records or other evidence in the United States.

2.9 Compliance with U.S. Law. Nothing in this Agreement shall excuse TerreStar from its obligation to comply with U.S. legal requirements, including those requiring the retention, preservation, or production of information, records, or data, those not to unlawfully intercept telecommunications or unlawfully access stored telecommunications, Chapters 119 and 121 of Title 18, United States Code, and the requirements of the Communications Assistance for Law Enforcement Act, 47 U.S.C. § 1001 *et seq.*

2.10 Customer Proprietary Network Information. With respect to Domestic Communications, TerreStar shall comply with all applicable FCC rules and regulations governing access to and storage of Customer Proprietary Network Information (“CPNI”), as defined in 47 U.S.C. § 222(h)(1).

2.11 Storage of Protected Information. The storage of Classified and Sensitive Information by TerreStar or its Affiliates shall be at an appropriately secure location in the United States or other secure location within the offices of a U.S. military facility, a U.S. Embassy or Consulate or other U.S. Government Authority.

### ARTICLE 3: SECURITY

3.1 Measures to Prevent Improper Use or Access. TerreStar shall take all practicable measures to prevent the use of or access to TerreStar’s equipment or facilities to conduct Electronic Surveillance of Domestic Communications, or to obtain or disclose Domestic Communications, Classified Information, or Sensitive Information, in violation of any U.S. federal, state, or local laws or the terms of this Agreement. These measures shall include creating and complying with any policies and procedures as required by 47 C.F.R. § 1.20003, as applicable, and other appropriate written technical, organizational, and personnel-related policies and procedures, implementation plans, and physical security measures.

3.2 Disclosure of, or Access to, Domestic Communications and Information by Foreign Individuals, Entities, or Governments. TerreStar shall not, directly or indirectly, disclose, permit disclosure of, or provide access to Domestic Communications, or Call-Associated Data, Transactional Data, or Subscriber Information related to Domestic Communications to any Foreign individual (other than TerreStar employees with a need to know) or entity, or Foreign Governmental Authority, or to any person in response to the legal process or request by a Foreign individual or entity, or Foreign Governmental Authority, without first satisfying all applicable U.S. legal requirements, and obtaining the express written consent of the Government Parties or the authorization of a court of competent jurisdiction in the United States, provided that TerreStar may

respond to legal process issued by Foreign Governmental Authority without obtaining such consent or court authorization after determining that such response would not be prohibited by applicable U.S. law, and making the notification to the Government Parties required herein. Any such requests or submission of legal process shall be reported to the Government Parties no later than five (5) business days after its is received by TerreStar. TerreStar shall take reasonable measures to ensure that it will promptly learn of all such requests or submission of legal process.

3.3 Disclosure of, or Access to, Certain Other Information by Foreign Individuals, Entities, or Governments. TerreStar shall not, directly or indirectly, disclose or permit disclosure of, or provide access to:

- (a) Classified or Sensitive Information;
- (b) Subscriber Information, Transactional Data, Call-Associated Data, or a copy of any Wire or Electronic Communications, intercepted or acquired pursuant to Lawful U.S. Process; or
- (c) the existence of Lawful U.S. Process that is not already a matter of public record

to any Foreign individual (other than TerreStar employees who are authorized and have a need to know) or entity, or Foreign Governmental Authority, or to any person in response to the legal process or request by a Foreign individual or entity, or Foreign Governmental Authority, without first satisfying all applicable U.S. legal requirements, and obtaining the express written consent of the Government Parties or the authorization of a court of competent jurisdiction in the United States. Any such requests or submission of legal process shall be reported to the Government Parties no later than five (5) business days after it is received by TerreStar. TerreStar shall take reasonable measures to ensure that it will promptly learn of all such requests or submission of legal process.

3.4 Points of Contact. Within five (5) business days after the Effective Date, TerreStar shall designate points of contact within the United States with the authority and responsibility for accepting and overseeing the carrying out of Lawful U.S. Process. The points of contact shall be assigned to an office of TerreStar or its Outsourcing Contractor in the U.S., shall be available twenty-four hours per day, seven days per week, and shall be responsible for accepting service for TerreStar and for maintaining the security of Sensitive and Classified Information and any Lawful U.S. Process. TerreStar shall immediately notify the Government Parties in writing of the points of contact, and thereafter shall promptly notify the Government Parties of any change in such designation. The points of contact shall be resident U.S. citizens who are reasonably believed by TerreStar to be eligible for appropriate U.S. security clearances. TerreStar and any Outsourcing Contractor as applicable shall cooperate with any request by a U.S. Governmental Authority that a background check and/or security clearance process be completed for a designated point of contact.

3.5 Security of Lawful U.S. Process, Classified and Sensitive Information. TerreStar shall ensure that any Outsourcing Contractor protects the confidentiality and security of all Lawful U.S. Process, Classified and Sensitive Information in accordance with U.S. Federal and state law or regulation. TerreStar shall ensure that knowledge of the existence of any Lawful U.S. Process served upon

TerreStar's Outsourcing Contractor is limited to those individuals who are authorized to know and whose assistance is strictly necessary to ensure compliance. TerreStar's Outsourcing Contractor shall maintain a list of the names, dates and places of birth, and current addresses of each such individual and the list shall include but not be limited to any technicians assisting in the implementation of Electronic Surveillance. TerreStar's Outsourcing Contractor shall make the list available upon request to any law enforcement agency or officer seeking compliance with Lawful U.S. Process.

3.6 Information Security Plan. TerreStar shall form and implement an Information Security Plan, which shall include provisions for the following:

- (a) Take appropriate measures to prevent unauthorized access to data or facilities that might contain Classified or Sensitive Information;
- (b) Assign U.S. citizens, who meet high standards of trustworthiness for maintaining the confidentiality of Sensitive Information, to positions that handle or regularly deal with information identifiable to such person as Sensitive Information;
- (c) Upon request from the Government Parties, provide the name and any other identifying information requested for each person who handles or regularly deals with Sensitive Information;
- (d) Require that personnel handling Classified Information, if any, shall have been granted appropriate U.S. security clearances; and
- (e) Provide that the points of contact described in Section 3.4 shall have sufficient authority over any of TerreStar's employees who may handle Classified or Sensitive Information to maintain the confidentiality and security of such information in accordance with applicable U.S. legal authority and the terms of this Agreement.

3.7 Nondisclosure of Protected Data. TerreStar shall not directly or indirectly disclose information concerning Lawful U.S. Process, Classified Information, or Sensitive Information to any third party, or officer, director, shareholder, employee, agent, or Contractor of TerreStar (other than an Outsourcing Contractor when authorized and when there is a need to know), including those who serve in a supervisory, managerial or officer role with respect to the employees working with the information, unless disclosure has been approved by prior written consent obtained from the Government Parties, or there is an official need for disclosure of the information in order to fulfill an obligation consistent with the purpose for which the information is collected or maintained and the disclosure has been approved by the entity that provided the information to TerreStar. Any such disclosure shall be in strict compliance with Section 3.5 of this Agreement.

3.8 Written Notice of Obligations. By a written statement, TerreStar shall instruct all appropriate officials, employees, contractors, and agents of TerreStar as to the obligations of this Agreement, including the individuals' duty to report any violation of this Agreement and the reporting requirements in Sections 5.2, 5.5, and 5.8 of this Agreement, and shall issue periodic reminders to them of such obligations. The written statement shall set forth in a clear and prominent manner the

contact information for a senior manager to whom such information may be reported, and shall also state that TerreStar will not discriminate against, or otherwise take adverse action against, anyone who reports such information to management or the United States government.

3.9 Access to Classified or Sensitive Information. Nothing contained in this Agreement shall limit or affect the authority of a U.S. Government Authority to deny, limit, or revoke whatever access TerreStar might have to Classified or Sensitive Information under that Government Authority's jurisdiction.

#### ARTICLE 4: DISPUTES

4.1 Informal Resolution. The Parties shall use their best efforts to resolve any disagreements that may arise under this Agreement. Disagreements shall be addressed, in the first instance, at the staff level by the Parties' designated representatives. Any disagreement that has not been resolved at that level shall be submitted promptly to higher authorized officials, unless any of the Government Parties believes that important national interests can be protected, or TerreStar believes that its paramount commercial interests can be resolved, only by resorting to the measures set forth in Section 4.2. If, after meeting with higher authorized officials, any of the Parties determines that further negotiation would be fruitless, then that Party may resort to the remedies set forth in Section 4.2. If resolution of a disagreement requires access to Classified Information, the Parties shall designate a person or persons possessing the appropriate security clearances for the purpose of resolving that disagreement.

4.2 Enforcement of Agreement. Subject to Section 4.1 of this Agreement, if any Party believes that any other Party has breached or is about to breach this Agreement, that Party may bring an action against the other Party for appropriate judicial relief. Nothing in this Agreement shall limit or affect the right of a U.S. Government Authority to:

- (a) require that the Party or Parties believed to have breached, or about to breach, this Agreement cure such breach within thirty (30) days, or whatever shorter time period is appropriate under the circumstances, upon receiving written notice of such breach;
- (b) request that the FCC modify, condition, revoke, cancel, or render null and void any license, permit, or other authorization granted or given by the FCC to TerreStar or its Affiliates, request that the FCC take other action, or request that the FCC impose any other appropriate sanction, including but not limited to a forfeiture or other monetary penalty, against TerreStar or its Affiliates;
- (c) seek civil sanctions for any violation of any U.S. law or regulation or term of this Agreement; or
- (d) pursue criminal sanctions against TerreStar or any of their respective directors, officers, employees, representatives or agents, or against any other person or entity, for violations of the criminal laws of the United States; or

- (e) seek suspension or debarment of TerreStar from eligibility for contracting with the U.S. Government.

4.3 Irreparable Injury. TerreStar agrees that the United States would suffer irreparable injury if for any reason TerreStar failed to perform any of its obligations under this Agreement, and that monetary relief would not be an adequate remedy. Accordingly, TerreStar agrees that, in seeking to enforce this Agreement, the U.S. Parties shall be entitled, in addition to any other remedy available at law or equity, to specific performance and injunctive or other equitable relief.

4.4 Waiver. The availability of any civil remedy under this Agreement shall not prejudice the exercise of any other civil remedy under this Agreement or under any provision of law, nor shall any action taken by a Party in the exercise of any remedy be considered a waiver by that Party of any other rights or remedies. The failure of any Party to insist on strict performance of any of the provisions of this Agreement, or to exercise any right they grant, shall not be construed as a relinquishment or future waiver; rather, the provision or right shall continue in full force. No waiver by any Party of any provision or right shall be valid unless it is in writing and signed by the Party.

4.5 Waiver of Immunity. TerreStar agrees that, to the extent that it or any of its property (including FCC licenses and authorizations and intangible property) is or becomes entitled at any time to any immunity on the ground of sovereignty or otherwise based upon a status as an agency or instrumentality of government from any legal action, suit, or proceeding or from setoff or counterclaim relating to this Agreement, from the jurisdiction of any competent court or the FCC, from service of process, from attachment prior to judgment, from attachment in aid of execution of a judgment, from execution pursuant to a judgment or arbitral award, or from any other legal process in any jurisdiction, it, for itself and its property expressly, irrevocably and unconditionally waives, and agrees not to plead or claim, any such immunity with respect to matters arising with respect to this Agreement or the obligations herein (including any obligation for the payment of money) in any proceeding brought by a U.S. federal, state or local Government Authority. TerreStar agrees that the waiver in this provision is irrevocable and is not subject to withdrawal in any jurisdiction or under any statute, including the Foreign Sovereign Immunities Act, 28 U.S.C. § 1602 *et seq.* The foregoing waiver shall constitute a present waiver of immunity at any time any action is initiated by a U.S. federal, state or local Government Authority against TerreStar with respect to compliance with this Agreement.

4.6 Forum Selection. Any civil action among the Parties for judicial relief with respect to any dispute or matter whatsoever arising under, in connection with, or incident to, this Agreement shall be brought, if at all, in the United States District Court for the District of Columbia.

4.7 Effectiveness of Article 4. This Article 4, and the obligations imposed and rights conferred herein, shall become effective upon the execution of this Agreement by all the Parties.

#### ARTICLE 5: REPORTING AND NOTICE

5.1 Filings Concerning De Jure or De Facto Control of TerreStar. If TerreStar makes any filing with the FCC or any other U.S. Government Authority relating to the *de jure* or *de facto* control of TerreStar, except for filings with the FCC for assignments or transfers of control that are *pro forma*,

TerreStar shall promptly provide to the Government Parties written notice and copies of such filing. This Section 5.1 shall become effective upon execution of this Agreement by all the Parties.

5.2 Changes in Ownership. If any member of the management of TerreStar (including officers and members of the Board of Directors) acquires any information that reasonably indicates that any single Foreign entity or individual, Foreign Governmental Authority, or Foreign Governmental Authority-controlled entity – other than those already identified to the Government Parties – has or will likely obtain an ownership interest (direct or indirect) in TerreStar of more than 10 percent, as determined in accordance with 47 C.F.R. § 63.09, or if any Foreign entity or individual, Foreign Governmental Authority, or Foreign Governmental Authority-controlled entity singly or in combination with other Foreign entities or individuals, Foreign Governmental Authority(ies), or Foreign Governmental Authority-controlled entities has or will likely otherwise gain either (1) Control or (2) *de facto* or *de jure* control of TerreStar, then such Director, officer or manager shall promptly cause TerreStar to notify the Government Parties in writing within ten (10) calendar days. Notice under this Section 5.2 shall, at a minimum, if such information is known or reasonably available:

- (a) identify the Foreign entity or individual(s), Foreign Governmental Authority, or Foreign Governmental Authority-controlled entity (specifying the name, addresses and telephone numbers);
- (b) identify the beneficial owners of the increased or prospective increased interest in TerreStar by the Foreign entity or individual(s), Foreign Governmental Authority, or Foreign Governmental Authority-controlled entity (specifying the name, addresses and telephone numbers of each beneficial owner); and
- (c) quantify the amount of ownership interest that the Foreign entity or individual(s), Foreign Governmental Authority, or Foreign Governmental Authority-controlled entity has or will likely obtain in TerreStar and, if applicable, the basis for its prospective Control of TerreStar.

5.3 Joint Ventures. In the event that TerreStar enters into joint ventures or other arrangements under which the joint venture or another entity may provide Domestic Communications:

- (a) if TerreStar has the power or authority to exercise *de facto* or *de jure* control over such joint venture or entity, then TerreStar will require the entity to fully comply with the terms of this Agreement; or
- (b) if TerreStar does not have *de facto* or *de jure* control over such joint venture or entity, the provisions of Section 5.4, Outsourcing Contracts, shall apply as if the joint venture or other arrangement was an Outsourcing Contract.

5.4 Outsourcing Contracts. TerreStar shall ensure the following with regard to any Outsourcing Contracts, including any contracts for the resale or distribution of TerreStar Service:

- (a) TerreStar shall include written provisions in any Outsourcing Contract that require the contractor to comply with all applicable terms of this Agreement and the

Implementation Plan, or shall take other reasonable, good-faith measures to ensure that the contractor is aware of, agrees to, and is bound to comply with all such terms.

- (b) TerreStar shall not enter into any Outsourcing Contract that affords the contractor access to Sensitive Information, unless such access has been lawfully approved by the entity that provided the information.
- (c) TerreStar shall not induce the contractor either to violate its obligations to TerreStar related to this Agreement or the Implementation Plan, or to take any action that, if taken by TerreStar, would violate this Agreement.
- (d) If TerreStar receives any information that a contractor or any of its employees or agents has taken an action that, had it been taken by TerreStar, would violate a provision of this Agreement or the Implementation Plan, or has violated its obligations to TerreStar related to this Agreement or the Implementation Plan, TerreStar (1) will notify the Government Parties promptly, and (2) in consultation and cooperation with them, will take all reasonable steps necessary to rectify promptly the situation, including terminating the Outsourcing Contract (with or without notice and opportunity for cure) or initiating and pursuing litigation or other remedies at law and equity.
- (e) Neither an Outsourcing Contract nor any provision of this Section 5.4 does nor shall it be construed to relieve TerreStar of any of its obligations under this Agreement or the Implementation Plan.

5.5 Notice of Foreign Influence. If TerreStar or its agent (including officers and members of the Board of Directors) acquires any information that reasonably indicates that any Foreign entity or individual, Foreign Governmental Authority, or Foreign Governmental Authority-controlled entity plans to participate or has participated in any aspect of the day-to-day management of TerreStar or to exercise any Control of TerreStar in such a way that (1) interferes with or impedes the performance by TerreStar of its duties and obligations under the terms of this Agreement; (2) interferes with or impedes the exercise by TerreStar of its rights under the Agreement; or (3) raises a concern with respect to the fulfillment by TerreStar of its obligations under this Agreement, then such person shall promptly notify the Government Parties in writing of the timing and the nature of the Foreign entity's or individual's, Foreign Governmental Authority's, or Foreign Governmental Authority-controlled entity's plans or actions.

5.6 Procedure and Process on Reporting. Within thirty (30) days of the Effective Date, TerreStar shall adopt and distribute to all officers and directors a written procedure or process for the reporting by officers and directors of noncompliance with this Agreement or the Implementation Plan, which shall incorporate the notice of reporting obligations by officials, employees, agents and contractors required under Section 3.8 of this Agreement. Any violation by TerreStar of any material term of such corporate policy shall constitute a breach of this Agreement.

5.7 Non-retaliation. Within thirty (30) days of the Effective Date, TerreStar shall, by duly authorized action of its Board of Directors, adopt and distribute to all officers and directors an official corporate policy that strictly prohibits TerreStar from discriminating or taking any adverse action against any officer, director, employee, contractor, or agent because he or she has in good

faith initiated or attempted to initiate a notice or report under Sections 5.2, 5.5, or 5.8 of this Agreement, or has notified or attempted to notify the management to report information that he or she believes in good faith is required to be reported to the Government Parties under either Sections 5.2, 5.5, or 5.8 of this Agreement or under TerreStar's written notice to employees on the reporting of any such information. Any violation by TerreStar of any material term of such corporate policy shall constitute a breach of this Agreement.

5.8 Reporting of Incidents. TerreStar shall report to the Government Parties any information acquired by TerreStar or any of its officers, directors, employees, contractors, or agents that reasonably indicates:

- (a) a breach of this Agreement;
- (b) access to or disclosure of Domestic Communications, or the conduct of Electronic Surveillance, in violation of federal, state or local law or regulation;
- (c) access to or disclosure of CPNI, Call-Associated Data, Transactional Data, or Subscriber Information, in violation of federal, state or local law or regulation; or
- (d) improper access to or disclosure of Classified or Sensitive Information.

This report shall be made in writing by the appropriate TerreStar officer to the Government Parties no later than ten (10) calendar days after TerreStar acquires information indicating a matter described in this Section. TerreStar shall lawfully cooperate in investigating the matters described in this Section. TerreStar need not report information where disclosure of such information would be in violation of an order of a court of competent jurisdiction in the United States.

5.9 Notice of Decision to Store Information Outside of the United States. TerreStar shall provide to the Government Parties thirty (30) days' advance notice if it plans to store or have stored on its behalf outside the United States any of the information specified in Section 2.4 herein. Such notice shall, at a minimum:

- (a) include a description of the type of information to be stored outside the United States;
- (b) identify the custodian of the information, if other than TerreStar;
- (c) identify the location where the information is to be located; and
- (d) identify the factors considered, pursuant to Section 2.5 of this Agreement, in deciding to store the information outside of the United States.

5.10 Access to Information and Facilities.

(a) The Government Parties or their designees may visit any part of TerreStar's Domestic Communications Infrastructure to conduct on-site reviews concerning the implementation of the terms of this Agreement, and TerreStar will provide unimpeded access for such on-site reviews.

(b) TerreStar will voluntarily provide prompt and unimpeded access to and disclosure of all records and information concerning technical, physical, management, or other security measures, as needed by the Government Parties or their designees to verify compliance with the terms of this Agreement including the Implementation Plan.

5.11 Access to Personnel. Upon reasonable notice from the Government Parties or their designees, TerreStar shall make available for interview any officers or employees of TerreStar and any contractors located in the United States, who are in a position to provide information to verify compliance with the terms of this Agreement.

5.12 Annual Report. On or before the last day of January of each year, a designated senior corporate officer of TerreStar shall submit to the Government Parties a report assessing TerreStar's compliance with the terms of this Agreement for the preceding calendar year (or since the Effective Date in the case of the first such report). The report shall include:

- (a) a copy of the then-current policies and procedures adopted to comply with this Agreement;
- (b) a summary of the changes, if any, to the policies or procedures, and the reasons for those changes;
- (c) a summary of any known acts of noncompliance with the terms of this Agreement, whether inadvertent or intentional, with a discussion of what steps have been or will be taken to prevent such acts from occurring in the future; and
- (d) identification of any other issues that, to TerreStar's knowledge, will or reasonably could affect the effectiveness of or its compliance with this Agreement.

5.13 Notices. Effective upon execution of this Agreement by all the Parties, all notices and other communications relating to this Agreement, such as a proposed modification, shall be in writing and shall be deemed given as of the date of receipt and shall be sent by electronic mail (if an e-mail address is specified below or in a subsequent notice) and one of the following methods: (a) delivered personally, (b) sent by facsimile, (c) sent by documented overnight courier service, or (d) sent by registered or certified mail, postage prepaid, addressed to the Parties' designated representatives at the addresses shown below, unless provided otherwise in this Agreement; provided, however, that upon written notification to the Parties, a Party may unilaterally amend or modify its designated representative information, notwithstanding any provision to the contrary in Section 8.6 of this Agreement:

Department of Justice  
Assistant Attorney General for National Security  
National Security Division  
950 Pennsylvania Avenue, NW  
Washington, D.C. 20530  
ttelecom@usdoj.gov  
a.kraken@ic.fbi.gov

Department of Homeland Security  
Assistant Secretary for Policy  
3801 Nebraska Avenue, N.W.  
Washington, D.C. 20528  
ip-fcc@dhs.gov

Douglas Brandon  
General Counsel, Secretary, and Senior Vice President  
TerreStar Networks Inc.  
12010 Sunset Hills Road  
Ninth Floor  
Reston, VA 20190  
doug.brandon@terrestar.com

#### ARTICLE 6: CONFIDENTIALITY; USE OF INFORMATION

6.1 Confidentiality. The Government Parties shall take all measures required by law to protect from public disclosure all information submitted by TerreStar (or other entities in accordance with the terms of this Agreement including the Implementation Plan) to them in connection with this Agreement and clearly marked with the legend “Business Confidential; subject to protection under 5 U.S.C. § 553(b)” or similar designation. Such markings shall signify that it is the company’s position that the information so marked constitutes “trade secrets” and/or “commercial or financial information obtained from a person and privileged or confidential,” or otherwise warrants protection within the meaning of 5 U.S.C. § 552(b)(4). For the purposes of 5 U.S.C. § 552(b)(4), the Parties agree that information so marked is voluntarily submitted. If a request is made under 5 U.S.C. § 552(a)(3) for information so marked, and disclosure of any information (including disclosure in redacted form) is contemplated, TerreStar shall be provided with the notices and procedures required by law, including those specified in Executive Order 12600, 52 Fed. Reg. 23781 (June 25, 1987).

6.2 Use of Information by U.S. Government for Any Lawful Purpose. Nothing in this Agreement shall prevent the Government Parties or any other U.S. Governmental Authority from lawfully disseminating this Agreement or using any information produced under or otherwise related to this Agreement to seek enforcement of this Agreement, or for any other lawful purpose.

#### ARTICLE 7: FCC CONDITION

7.1 FCC Approval. Upon the execution of this Agreement, including the Implementation Plan, by all of the Parties, TerreStar shall request that the FCC adopt a condition to TerreStar’s existing or pending FCC authorizations, substantially the same as set forth in Exhibit A attached hereto (the “Condition to FCC Authorization”).

7.2 Right to Object to Future FCC Filings. TerreStar agrees that in any application or petition by TerreStar, filed with or granted by the FCC after the execution of this Agreement by all the Parties, for a license or other authority under Titles II and III of the Communications Act of 1934, as amended, to provide service to or operate MESSs in the United States for communications

utilizing the TerreStar system, or to offer, distribute, or resell Domestic Communications in the United States for communications utilizing the TerreStar system, TerreStar shall request that the FCC condition the grant of such licensing or other authority on compliance with the terms of this Agreement, as amended if necessary. Notwithstanding Section 8.9, nothing in this Agreement shall preclude the Government Parties or any other U.S. Governmental Authority from opposing, formally or informally, any FCC application or petition by TerreStar for other authority, or to transfer its license(s) to a third party (except with respect to *pro forma* assignments or *pro forma* transfers of control), and to seek additional or different terms that would, consistent with the public interest, address any concerns regarding the ability of the United States to enforce the laws, preserve the national security, and protect the public safety, raised by the services and transactions underlying any such application or petition.

#### ARTICLE 8: OTHER

8.1 Right to Make and Perform Agreement. TerreStar represents that it has and shall continue to have throughout the term of this Agreement the full right to enter into this Agreement and perform its obligations hereunder and that this Agreement is a legal, valid, and binding obligation of TerreStar enforceable in accordance with its terms.

8.2 Headings. The article and section headings and numbering in this Agreement are inserted for convenience only and shall not affect the meaning or interpretation of the terms of this Agreement.

8.3 Other Laws. Nothing in this Agreement is intended to limit or constitute a waiver of (a) any obligations imposed by any U.S. federal, state, or local law or regulation on TerreStar, (b) any enforcement authority available under any U.S. federal, state, or local law or regulation, (c) the sovereign immunity of the United States, or (d) any authority the U.S. Government may possess over the activities or facilities if TerreStar located within or outside the United States (including authority pursuant to the International Emergency Economic Powers Act). Nothing in this Agreement is intended to or is to be interpreted to require the Parties to violate any applicable U.S. law.

8.4 Statutory References. All references in this Agreement to statutory provisions and executive orders shall include any future amendments to such statutory provisions and executive orders.

8.5 Non-Parties. Nothing in this Agreement is intended to confer or does confer any rights on any person other than the Parties and any Government Authorities entitled to effect Electronic Surveillance pursuant to Lawful U.S. Process.

8.6 Modification. This Agreement may only be modified by written agreement signed by all of the Parties, provided that the Government Parties may, by a written notice to TerreStar signed by all of them, waive any provision of this Agreement intended for their benefit unless such waiver is objected to by TerreStar. The Government Parties agree to consider promptly and in good faith possible modifications to this Agreement if TerreStar believes that the obligations imposed on it under this Agreement are substantially more restrictive than those imposed on other U.S.- and foreign-licensed service providers in like circumstances in order to protect U.S. national security, law enforcement, and public safety concerns. Any substantial modification to this Agreement shall be reported to the FCC within thirty (30) days after approval in writing by the Parties. For purposes of

the previous sentence, an amendment to the Implementation Plan shall not be considered a substantial modification to this Agreement.

8.7 Severability. The provisions of this Agreement shall be severable and if any provision thereof or the application of such provision under any circumstances is held invalid by a court of competent jurisdiction, it shall not affect any other provision of this Agreement or the application of any provision thereof.

8.8 Changes in Circumstances for TerreStar. The Government Parties agree to negotiate in good faith and promptly with respect to any request by TerreStar for relief from application of specific provisions of this Agreement if those provisions become unduly burdensome or have an adverse affect on TerreStar's competitive position.

8.9 Changes in Circumstances for the Government Parties. If after the date that all the Parties have executed this Agreement, the Government Parties find that the terms of this Agreement are inadequate to address national security, law enforcement, or public safety concerns, then TerreStar will negotiate in good faith to modify this Agreement to address those concerns.

8.10 Counterparts. This Agreement may be executed in one or more counterparts, including by facsimile, each of which shall together constitute one and the same instrument.

8.11 Successors and Assigns: This Agreement shall inure to the benefit of, and shall be binding upon, the Parties, and their respective successors and assigns. This Agreement shall also be binding on all subsidiaries, divisions, departments, branches, and other components or agents of TerreStar, and on all Affiliates of TerreStar.

8.12 Effectiveness of Article 8. This Article 8, and the obligations imposed and rights conferred herein, shall be effective upon execution of this Agreement by all the Parties.

8.13 Effectiveness of Agreement. Except as otherwise specifically provided elsewhere in this Agreement, the obligations imposed and rights conferred by this Agreement shall take effect upon the Effective Date.

8.14 Suspension of Agreement and Obligations Hereunder. This Agreement shall be suspended upon thirty (30) days' notice to the Government Parties that neither TerreStar, nor any transferee or assignee of the FCC licenses or authorizations held by TerreStar, provides or facilitates Domestic Communications in the United States, unless any of the Government Parties, within that 30-day period, seeks additional information or objects to the suspension.

8.15 Termination of Agreement. This Agreement shall be terminated in its entirety upon the written determination of the Government Parties that TerreStar has provided notice and reasonably satisfactory documentation that no foreign entity or combination of foreign entities (including one or more persons under common Control) either Controls TerreStar or holds, directly or indirectly, a ten (10) percent or greater interest in TerreStar, and that this Agreement is no longer necessary to in order to protect U.S. national security, law enforcement, or public safety concerns. It is expressly acknowledged that this Agreement shall not be terminated with respect to TerreStar

during such time as the TerreStar Service is provided or facilitated within the United States by TerreStar via any facilities or equipment, including but not limited to any land earth station, located outside of the U.S. If this Agreement is not terminated pursuant to this provision, the Government Parties agree to consider promptly and in good faith possible modifications to this Agreement.

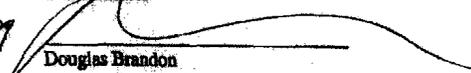
8.16 Notice of Additional Services. TerreStar shall provide a minimum of thirty (30) days' advance notice to the Government Parties in the event that TerreStar or any Affiliate changes or intends to change its present services with respect to Domestic Communications, as set forth in the Recitals to this Agreement, such that the material representations made therein are no longer fully accurate, true and complete. In no event will such notice relieve any Party to this Agreement of obligations under this Agreement or be construed as a waiver of any Party's rights under this Agreement.

8.17 Execution by Harbinger Funds. Harbinger Capital Partners Master Fund I, Ltd., which is a Cayman Islands exempted company, and Harbinger Capital Partners Special Situations Fund, L.P., which is a Delaware limited partnership (collectively, the "Harbinger Funds") are shareholders of TerreStar. In light of the fact that one of the Harbinger Funds is organized under the laws of another country, and in light of the fact that the Harbinger Funds have a substantial minority interest in TerreStar, the Government Parties, in accordance with their policies, have requested, and the Harbinger Funds have agreed, that the Harbinger Funds execute this Agreement to acknowledge its terms.

This Agreement is executed on behalf of the Parties:

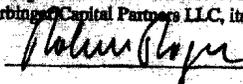
TerreStar Corporation  
TerreStar Networks Inc.  
and affiliates

Date: December 4, 2009

  
Douglas Brandon  
General Counsel, Secretary, and Senior Vice President

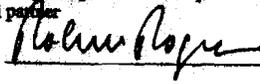
Harbinger Capital Partners Master Fund I, Ltd.  
(Executed pursuant to Section 8.17 of this Agreement.)  
By: Harbinger Capital Partners LLC, its investment manager

Date: 12/2/09

By:   
Name: Robin Roger  
Title: Managing Director & General Counsel

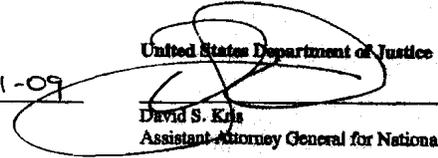
Harbinger Capital Partners Special Situations Fund, L.P.  
(Executed pursuant to Section 8.17 of this Agreement.)  
By: Harbinger Capital Partners Special Situations GP, LLC, its  
general partner

Date: 12/2/09

By:   
Name: Robin Roger  
Title: Managing Director & General Counsel

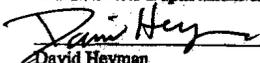
United States Department of Justice

Date: 12-11-09

  
David S. Kils  
Assistant Attorney General for National Security

United States Department of Homeland Security

Date: 12-18-09

  
David Heyman  
Assistant Secretary for Policy

**EXHIBIT A**  
**CONDITION TO FCC AUTHORIZATION**

IT IS FURTHER ORDERED that this authorization and any licenses related thereto are subject to compliance with the provisions of the Agreement attached hereto between TerreStar, on the one hand, and the Department of Justice (“DOJ”) and the Department of Homeland Security (“DHS”), on the other hand, dated \_\_\_\_\_, 2009, which Agreement is intended to enhance the protection of U.S. national security, law enforcement, and public safety. Nothing in this Agreement is intended to limit any obligation imposed by Federal law or regulation.